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CURRENT TOPICS

The Commonwealth and Empire Law Conference

THE Commonwealth and Empire Law Conference, which is to be held in London from 20th to 27th July, 1955, follows a proposal submitted by the Council of The Law Society and the General Council of the Bar to the national organisations of the legal profession in Australia, Canada, Ceylon, New Zealand and South Africa. There being general approval for the proposal, an Executive Committee was set up consisting of nominees of each of those countries and of the United Kingdom. The nominees of the United Kingdom are Sir LEONARD HOLMES and Mr. RICHARD O'SULLIVAN, Q.C., for England, and Mr. W. R. MILLIGAN, Q.C., and Mr. JOHN WATSON for Scotland. Any member of the legal profession may attend if delegated by The Law Society or the Bar Association of which he is a member. Anyone wishing to attend should communicate as soon as possible with his professional organisation and pay the registration fee of £5 5s. The varied social programme which has been planned is to culminate with a banquet in the Guildhall of the City of London on 27th July. It includes coach tours and river excursions to many places of interest and post-conference tours to the Southern Counties (including Devon and Cornwall), Wales and the Lakes. A reception will be held at The Law Society's Hall and other receptions will be given by H.M. Government of the United Kingdom in the Royal Gallery of the House of Lords, by the London County Council and by the Twelve Great Companies of the City of London. Parties will be given by the Hon. Societies of Gray's Inn and Lincoln's Inn at Gray's Inn and by the Hon. Societies of the Inner Temple and Middle Temple at the Middle Temple. A social programme has been arranged by the legal profession in Scotland for those delegates visiting Scotland before the Conference. Subjects selected for discussion include Professional Ethics, the Lawyer's Part in Law Reform, Retirement Benefits, the Jury System, Recruitment to the Profession, Land Tenure, Legal Aid, Fusion, Congestion in the Courts, Legal Education and Tenure and Qualification of Colonial Judges. All communications about the Conference should be addressed to T. G. LUND, C.B.E., Acting Secretary to the Executive Committee, The Law Society's Hall, Chancery Lane, W.C.2.

Reflection

OVER eighteen pages of a recent number of the Weekly Law Reports are occupied by an account of an appeal and cross-appeal from a county court judge in an action in which he had awarded the plaintiff the sum of one shilling in respect of the discharge of water by an underground channel from the defendant's land into the plaintiff's manhole after a licence impliedly permitting this had been revoked; and had dismissed a claim based on a contention that a garage built substantially on the defendant's land in fact encroached upon that of the plaintiff. We would not, of course, be taken as suggesting that the matters in question in *Hopgood* v. *Brown* [1955] 1 W.L.R. 213 were not of considerable importance to the parties. Nor that the very careful exposition of them to be found in the judgments of the Court of Appeal are not of great interest and value as additions to the regrettably exiguous

CONTENTS

body of existing case law on the difficult practical topics of boundaries, of the construction of parcels in conveyances of land, of estoppel by representation and of mutual licences. These aspects are now being examined in the "Conveyancer's Diary." We seek merely to underline an observation of the present LORD MORTON OF HENRYTON, to which Sir RAYMOND EVERSHED, M.R., twice referred in the course of his judgment, to the effect that actions in which the subject-matter is comparatively trifling often give rise to the most difficult questions of fact and of law. Our readers will have had personal experience of the truth of this remark—and of the impossibility of explaining it to the satisfaction of the lay mind. There is nothing any lawyer can do about it. It is not a matter which any procedural reform will remedy. The reign of Topsy-turveydom will indeed be with us when ordinary people begin to take disproportionate care over *minutiæ* because of the difficulty and cost of litigating them later if they do not. Yet the moral to be learned from many a neighbourly dispute upon which a solicitor has to advise is simply that informality in legal relationships brings only a precarious contentment.

"Client Account" in Savings Bank Accounts

IT is not permissible, the Council of The Law Society state in an announcement in the March issue of the *Law Society's Gazette*, for a solicitor to place clients' money on deposit in a Post Office Savings Bank Account, as the Post Office requirements preclude the words "client account" being added to the title of a savings bank account, no notice of a trust being receivable by the Postmaster-General. Rule 2 of the Solicitors' Accounts Rules, 1945, defines a client account as "a current or deposit account at a bank in the name of the solicitor, in the title of which the word 'client' appears." The Council desire to make it clear that there is, in their opinion, no objection under the Solicitors' Accounts Rules, 1945, to a solicitor placing clients' money on deposit in a trustee savings bank account provided that the title of that account includes the words "client account." The Council understand that it is permissible in the case of trustee savings bank accounts for such words to be added.

Inquiries by Purchasers of Riparian Land

THE attention of solicitors acting for purchasers of riparian land or of land situated in internal drainage districts is drawn, in the March issue of the *Law Society's Gazette*, to the need for making inquiries of the clerk of the appropriate river board as to special liabilities which may attach to the land as a result of "river board legislation," e.g., the Land Drainage Act, 1930, and the Rivers (Prevention of Pollution) Act, 1951. The commonest of these liabilities are (*a*) drainage rates levied under the Land Drainage Act, 1930; (*b*) orders made under s. 3 of the Rivers (Prevention of Pollution) Act, 1951 (which provides that a river board may, in certain circumstances, apply to the court for an order prohibiting the use or proposed use of property in such a way as is likely to result in pollution); and (*c*) conditions imposed on the discharge of a trade or sewage effluent to a stream, which appear in the register kept under s. 7 (7) of the Act of 1951. Inquiries should be accompanied by a plan sufficient to identify the property concerned from an ordnance map. Where a solicitor does not know the clerk's name and address, inquiries may be sent to the local authority (excluding county councils) with a request that the local authority will forward them to the clerk of the river board. A list of river boards with their clerks' names and addresses is given in the *Gazette*. Purchasers' solicitors are advised to make their inquiries in respect of drainage rates well in advance of completion dates, because clerks of river boards have to pass on these inquiries to the clerks of internal drainage boards.

Land Tax Inquiries

DIFFICULTIES experienced when inquiries are made of inspectors and collectors of taxes as to the existence of any land tax affecting a particular property or in relating an assessment to the property to which it is intended to apply are referred to in a note in the March issue of the *Law Society's Gazette*. Solicitors experiencing problems of this nature are invited to send particulars to the Secretary at The Law Society's Hall, Chancery Lane, W.C.2. The *Gazette* states that it is believed that such difficulties still occur despite a review of all land tax exemptions and abatements which was made by the Board of Inland Revenue in 1953. So far as inspectors of taxes are concerned, the difficulty of relating an assessment to the property to which it is intended to apply is due, generally speaking, to historical causes, e.g., land tax parishes which are not now co-terminous with income tax parishes, amalgamation and division of properties so that the subject of a land tax assessment is not always the same as that assessed under Sched. A, and descriptions of properties in the assessments which are not readily identifiable with descriptions supplied by taxpayers.

Hotel Proprietors (Liabilities and Rights) Bill

A BILL to give effect to recommendations in the Law Reform Committee's second report, the Hotel Proprietors (Liabilities and Rights) Bill, is now on its way to a second reading in the Commons. Clause 1 lays down that the rights and obligations of innkeepers under common law attach only to the proprietors of an establishment held out by them as "offering food, drink and, if required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received." Their strict liability would be only to persons who have engaged sleeping accommodation at the hotel and provided that the loss or damage occurs while they are guests at the hotel, or for a limited period before or after that time. Strict liability would not extend to motor or other vehicles or to live animals. Hotel proprietors would not have a lien for their charges on this class of property. Their liability in respect of other property is limited to £50 in respect of any one article, or £100 in the aggregate (instead of £30 as at present), except where the property is stolen, lost or damaged through default of the proprietor or his servant, deposited expressly for safe custody or offered for deposit and refused.

L.C.C. Development Plan

THE MINISTER OF HOUSING AND LOCAL GOVERNMENT has approved with modifications the development plan for the Administrative County of London. In a letter accompanying the approved plan he expressed regret that the plan should provide for an increase in the area allocated for office building since it was the enormous number of offices and office workers which constituted the greatest single cause of congestion. He had accordingly re-zoned for residential use some 380 acres of land, at present predominantly residential or vacant, which, under the plan, was allocated for industrial, commercial or office uses. This change would help to reinforce the policy of de-centralisation. He had also inserted a general provision that planning permission should not normally be given, in any zone, to change the use of residential property which was still capable of use for housing.

RECOGNITION OF FOREIGN DIVORCE DECREES: A NEW DOCTRINE

In deciding whether or not to recognise a foreign divorce decree the English courts have until recently concerned themselves only with the question of where the parties to the dissolved marriage were domiciled, according to English law, at the date of the inception of the foreign proceedings or at the date of the foreign decree. Apart from the two recent cases of *Travers* v. *Holley* [1953] P. 246 and *Dunne* v. *Saban* [1954] 3 W.L.R. 980, the English courts have not hitherto been concerned as to the ground upon which the foreign court itself based its jurisdiction to grant the decree.

Thus the English courts recognise the decree of divorce granted by a foreign court if the parties to the marriage were domiciled, according to English law, in the territory whose court granted the divorce at the time the divorce proceedings were commenced there (*Le Mesurier* v. *Le Mesurier* [1895] A.C. 517, 527, 540), no matter what was the ground upon which the foreign court itself based its jurisdiction to grant the decree. In *Bater* v. *Bater* [1906] P. 209, for example, the decree of the New York court, which based its jurisdiction upon the residence of both parties in New York at the time when the matrimonial offence was committed (see *per* Sir Gorell Barnes, P., at p. 213), was recognised because the English court found that the parties were domiciled in New York at the time proceedings were commenced there (see *per* Collins, M.R., at pp. 226 and 232). In *Gatty* v. *A.-G.* [1951] P. 444, Karminski, J., stated, *obiter*, at p. 454, that if the petitioners' parents had been domiciled in North Dakota at the relevant time the decree of dissolution of their marriage of the North Dakota court, which founded its jurisdiction upon ninety days' residence in North Dakota (see at p. 445), would have been recognised in England. A similar opinion had earlier been more tentatively expressed by Lord Penzance in *Shaw* v. *A.-G.* (1870), 2 P. & D. 156, 162 (see also at p. 158, where the foreign jurisdiction was stated to have been founded upon residence for six months). The English courts would also recognise as effective a decree of the court of the domicile where that court itself founded its jurisdiction not upon the domicile of the parties but upon their nationality: *per* Lord Phillimore in *Salvesen or von Lorang* v. *Administrator of Austrian Property* [1927] A.C. 641, 670.

The English courts recognise a decree of divorce granted by a court other than that of the parties' domicile if the decree would be recognised as of binding effect by the courts of the territory in which, according to English law, the parties were domiciled at the date the decree was pronounced: *Armitage* v. *A.-G.* [1906] P. 135. Here again the English courts, once they are satisfied that the decree would be so recognised, do not concern themselves either with the grounds upon which the foreign court which pronounced the decree based its jurisdiction, or with the grounds upon which the court of the domicile would base its recognition of the decree.

Thus in *Armitage* v. *A.-G.*, *supra*, the English court recognised a South Dakota divorce decree, where by English law both the parties were domiciled in the State of New York, but by New York and South Dakota law the wife had, at the date of the South Dakota decree, acquired a separate domicile in South Dakota, because the South Dakota decree would therefore have been recognised in New York. The English court recognised a French decree granted in similar circumstances in *Clark* v. *Clark* (1921), 37 T.L.R. 815. In *Har-Shefi* v. *Har-Shefi (No. 2)* [1953] P. 220, where the parties were domiciled in Israel at the material time, the English court recognised a decree of divorce granted by the Jewish Rabbinical Court in London (the Beth Din) because the decree would have been recognised in Israel. In that case it was the religion of the parties, not their domicile, which was the basis upon which both the Beth Din's assumption of jurisdiction and the Israeli recognition of the Beth Din decree were founded (see at p. 222).

To sum up, until now the English courts have recognised foreign divorce decrees only where those decrees were granted by the court of the territory in which, according to English law, the parties were domiciled at the time the divorce proceedings were commenced, or where the foreign decrees would have been recognised as of binding effect by the courts of the territory in which, according to English law, the parties were domiciled at the date of the decree. In neither case, as has been pointed out, would English recognition be affected by the grounds upon which the foreign courts themselves based their jurisdiction or recognition.

In two recent cases, however, it has been suggested that the English courts would recognise a foreign decree divorcing persons domiciled, according to English law, in England, and that such recognition would depend upon the grounds upon which the foreign court based its jurisdiction rather than upon the actual facts of the particular case. In *Travers* v. *Holley* [1953] P. 246, the majority of the Court of Appeal (Somervell and Hodson, L.JJ., Jenkins, L.J., dissenting) held that the parties were domiciled in England immediately after their marriage and subsequently acquired a New South Wales domicile. The wife later instituted divorce proceedings in New South Wales, where she was eventually granted a decree. At some time (it was not clear when) the husband reacquired his English domicile. The New South Wales court based its jurisdiction, whether exclusively or merely alternatively is not clear from the reports ([1953] P. 246 and [1953] 2 All E.R. 794), upon s. 16 (*a*) of the New South Wales Matrimonial Causes Act, No. 14, 1899, which provides, *inter alia*, that " no wife who was domiciled in New South Wales when the desertion commenced shall be deemed to have lost her domicile by reason only of her husband having thereafter acquired a foreign domicile." Somervell, L.J., said, at pp. 250–251, that " Although the wording [of s. 13 of the English Matrimonial Causes Act, 1937, now s. 18 of the Act of 1950] is different [from that of the New South Wales Act] the result for present purposes is the same as the provisions of the New South Wales Act. On principle it seems to me plain that our courts in this matter should recognise a jurisdiction which they themselves claim," because " the provisions of the New South Wales Act of 1899 are since 1937 no longer, so far as our courts are concerned, peculiar to its forum, but are common to its forum and our own." Jenkins, L.J., agreed with this proposition at p. 254. Hodson, L.J., after expressing the same view in different language at pp. 256–7, concluded: " It seems that where it is found that the municipal law is not peculiar to the forum of one country but corresponds with a law of a second country, such municipal law cannot be said to entrench upon the interests of that country. I would say that where, as here, there is in substance reciprocity, it would be contrary to principle and inconsistent with comity if the courts of this country were to refuse to recognise a jurisdiction which *mutatis mutandis* they claim for themselves. The principle

laid down and followed since the *Le Mesurier* case must, I think, be interpreted in the light of the legislation which has extended the power of the courts of this country in the case of persons not domiciled here."

If the parties had not lost their New South Wales domicile of choice before the New South Wales divorce proceedings were instituted, all the *dicta* cited above would have been *obiter:* Somervell and Hodson, L.JJ., however, expressly refused (at pp. 250 and 255 respectively) to express an opinion as to whether the parties lost their New South Wales domicile of choice before or after the New South Wales proceedings were instituted, declaring that it was unnecessary to do so since in any event, in view of the new doctrine of recognition which they had enunciated, the New South Wales decree was entitled to recognition. In view of this it is respectfully submitted that this new doctrine of recognition was the *ratio decidendi* of *Travers* v. *Holley, supra,* and that Davies, J., was not correct when he stated, in *Dunne* v. *Saban* [1954] 3 W.L.R. 980, at p. 986, that the *dicta* as to it were all *obiter.*

Davies, J., however, accepted and followed these *dicta* in *Dunne* v. *Saban, supra,* in which case he refused to recognise a Florida divorce granted to a wife whose husband, having, according to English law, had an English domicile of origin, married her in England and then acquired a Florida domicile of choice, deserted his wife and reacquired his English domicile about eighteen months after the parties had settled in Florida. When the wife commenced divorce proceedings in Florida she had been residing there just over two years and the parties had, according to English law, reacquired their English domicile. (For these facts see at pp. 981–2 and 983.) The Florida court based its jurisdiction to grant the decree (on the ground of the husband's extreme cruelty) on ninety days' residence by the wife in Florida, and on her having acquired a separate domicile there (a concept not recognised by English law unless, as in *Armitage* v. *A.-G., supra,* and *Clark* v. *Clark, supra,* it is recognised by the courts of the husband's domicile).

Counsel for the husband in *Dunne* v. *Saban, supra,* apparently argued (see at pp. 984–5) that because s. 18 (1) (*b*) of the Matrimonial Causes Act, 1950, gives the English court jurisdiction " to entertain proceedings by a wife . . .notwithstanding that the husband is not domiciled in England . . . if the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and the husband is not domiciled in any other part of the United Kingdom," the English court " must recognise the right of a court of a foreign country to exercise jurisdiction where the wife is resident there despite the fact that the husband is domiciled elsewhere."

Davies, J., rejected this argument because (p. 989) " the observations in *Travers* v. *Holley* merely decide that this court will recognise the right of other courts to encroach upon the principle of domicile only to the extent to which this court also does. Where, as here, you find a court purporting, no doubt completely properly according to the laws of Florida, to exercise jurisdiction upon ninety days' residence, even though that is coupled with something that we do not recognise, namely, a separate domicile of the wife in the United States, the only possible answer which this court can give is to say that the decree of that foreign court was in our law invalid."

On the facts as they were found in *Dunne* v. *Saban* (viz., that the parties had been domiciled in Florida immediately before the husband's desertion) the English court, had it been in the position of the Florida court, would have taken jurisdiction, and granted the wife a decree if satisfied of the husband's cruelty, under s. 18 (1) (*a*) of the Matrimonial Causes Act, 1950. The English court therefore refused in *Dunne* v. *Saban* to recognise a foreign decree, granted in circumstances in which the English court would itself have granted a decree, merely because the foreign court did not found its jurisdiction upon a ground sufficiently similar to that upon which the English court would have claimed jurisdiction. Apparently, therefore, the English court would not recognise a Florida decree granted to a wife who had been oridinarily resident in Florida for more than three years if her husband were domiciled in England at the time of the Florida proceedings.

The novelty of this doctrine is immediately apparent when it is remembered that where the English court finds on the facts that, according to English law, the parties are not domiciled in England, English recognition of a foreign decree does not depend upon the ground on which the court which granted the decree, whether that court was or was not the court of the domicile, founded its jurisdiction. It will be interesting to see to what lengths the English courts will carry their concern with the grounds upon which foreign courts assume jurisdiction to grant divorces to persons who, according to English law, are domiciled in England. If a foreign court were to found its jurisdiction upon nationality, or residence for less than three years, or religion, it seems that, if the husband was domiciled in England at the relevant time, the decree would not be recognised in any circumstances. That the requirements of a statute which would have given the English courts jurisdiction in such a case were in fact satisfied would apparently be irrelevant. But what would be the position if the foreign courts' requirements were more rigorous than the corresponding English ones, so that compliance with the foreign requirements automatically meant that the corresponding English requirements had been satisfied? Such a case would arise if, for example, a foreign court based its jurisdiction on residence for more than three years. As the greater includes the less it seems that such a jurisdiction would be recognised in England.

Whatever be the exact position, it is at least clear that if the wife of an English domiciled husband lives in New South Wales for three years, or if a husband who is domiciled in New South Wales deserts his wife there and acquires an English domicile, the English courts will recognise a subsequent New South Wales decree granted to the wife; but if the wife of an English domiciled husband lives in Florida for three years, or if a husband who is domiciled in Florida deserts his wife there and acquires an English domicile, the English courts will not recognise a subsequent Florida decree granted to the wife. Such a distinction seems unfortunate.

H. S.

The commission set up by the Church Assembly to " prepare in consultation with the Church Commissioners a measure to consolidate, with such amendments as may seem necessary or desirable, existing legislation relating to the rearrangement of pastoral supervision and of diocesan boundaries " has now been appointed. The members are Sir Geoffrey Hutchinson, M.C., T.D., Q.C. (Chairman), the Right Rev. A. G. Parham, the Archdeacon of Taunton, Canon Laurence Brown, Canon G. S. J. Downes, Lt.-Col. E. C. Arden, Mr. O. W. H. Clark, Mr. E. H. Johnson and Mr. T. A. Meade Falkner. Memoranda for consideration by the commission should be sent to the Secretary, Church Assembly, Church House, Dean's Yard, Westminster, S.W.1.

Taxation

EXCESS RENTS—TREATMENT OF PREMIUMS

THE decision to tax "excess rents" was taken in 1940 when it became clear that the revaluation of property for Sched. A purposes would have to be deferred. Had the draftsmen of the Finance Act, 1940, imagined that anything like another sixteen years would pass before the next revaluation, perhaps they would have paid some attention to the question of premiums on leases. As these were patently ignored, the law has been brought to a most unsatisfactory state. Notwithstanding the Rent Restrictions Acts, there is still a wide field in which the taking of premiums is permissible.

Computation of excess rents under s. 175

Most excess rent assessments are raised under s. 175 of the Income Tax Act, 1952 (replacing s. 15 of the Finance Act, 1940). Broadly speaking, the section provides for the computation each year of a new notional Sched. A net annual value by reference to the rent payable as respects that year and to the other terms of the lease. From this value is to be deducted the greater of—

(*a*) the net annual value actually assessed to Sched. A; or

(*b*) the rent payable by the lessor.

The excess constitutes the amount assessable as excess rent.

The determination of annual value is a question of fact for the General Commissioners (*Bishop and Marco* v. *Talbot* (1943), 25 Tax Cas. 398), but it is well settled that they may take into account not merely the rent payable but also, *inter alia*, the annual equivalent of any premium paid by a lessee (*Davies* v. *Abbott* (1927), 11 Tax Cas. 575). Accordingly, if it is a term of the lease referred to in s. 175 that a premium be paid, then it seems that the computation of notional annual value pursuant to that section may take the premium into account.

Apportionment of tax burden between owner and occupier

It seems unlikely, however, that the Legislature intended this, because it brings a drastic change into the principles on which the burden of income tax on property is apportioned between tenant and landlord.

It is the general rule that the person primarily liable to the Sched. A tax is the occupier. He has certain limited rights to deduct this tax from the rent. One limitation confines the deduction in the ordinary case to tax at the standard rate on the annual rent (s. 173 (1)). Where a premium has been taken into account in the computation of the Sched. A assessment, the Sched. A tax may well exceed tax at the standard rate on the rent. Consequently, the tenant himself bears the excess, which is usually referred to as tax on his "beneficial occupation" (see *Inland Revenue Commissioners* v. *Fargus* (1926), 10 Tax Cas. 665).

The principle of taxing "beneficial occupation"

The logic of this automatic apportionment of the tax burden between landlord and tenant where a premium has been paid is that the premium represents an investment by the tenant (or his predecessor) in the purchase of a portion of the landlord's interest. It is an investment which yields an annual return in the form of right to occupy the premises at a rent less than the rack-rent.

Section 175 jettisons this principle, by directing that the excess rent assessment be made on the landlord without any apportionment to the tenant. Moreover its operation is capricious. The extent to which the tax burden is transferred from tenant to landlord will depend on the amount of the actual Sched. A assessment, a consideration which ought to be irrelevant, since *ex hypothesi* the Sched. A assessment is based on facts which no longer obtain. Again the section does not apply at all to any year "as respects" which the lessor is not entitled to any rent (see *Strick* v. *Longsdon* (1953), 34 Tax Cas. 528). Thus, in an extreme case, the right to make an "excess rents" assessment may depend on whether or not a peppercorn is payable for the year in question.

"Short Leases"

Excess rents assessments are confined to "short" leases, which s. 172 of the Income Tax Act, 1952, laconically defines as leases which are not long leases. From the more extensive definition of "long lease" it emerges that a lease for a term not exceeding fifty years is a short lease. A lease for a longer term is also a short lease if the lessor can determine it within fifty years, or if it is determinable, at any time, after a death or a marriage. There is of course no particular magic about fifty years and it produces obvious anomalies as between leases just over and just under the statutory limit.

Excess rents under s. 176: tied premises

As we have said, s. 175 provides for the normal excess rent assessment. Section 176 (replacing s. 16 of the Finance Act, 1940) provides for all other excess rent assessments and sets out a different and novel formula for the computation. The formula is complicated enough, but one thing is reasonably clear: nothing is to be included in respect of premiums. This is fairly convincing proof that the draftsman did not intend premiums to be taken into account for any excess rents assessment.

When in 1952 it was decided to deal with excess rents from tied premises by adjustments in the computation of the lessor's trading profit (Finance Act, 1952, s. 26), no provision was made for bringing premiums into account. In other words, the rules follow s. 176 rather than s. 175.

Inland Revenue practice

In the beginning the Inland Revenue ignored premiums in excess rent computations, under s. 175 as well as under s. 176. But their attitude in relation to s. 175 has gradually hardened over the years.

First, the concession was withdrawn where—

(*a*) the lease did not exceed three years; or

(*b*) the premium was payable in instalments over the term.

Subsequently, the concession was withdrawn for leases not exceeding seven years. There is, of course, no more magic in either of these two periods than in the statutory fifty years. It is still open to the taxpayer to appeal against excess rent assessments which take premiums into account, and to have the annual value fixed by the Commissioners as a question of fact. Moreover, since the assessment is under Sched. D, not Sched. A, he can, if he wishes, appeal to the Special Commissioners instead of to the local General Commissioners (Income Tax Act, 1952, s. 62).

Avoiding tax on premiums

In the present state of the law, the taking of a premium on a lease in such circumstances that it attracts tax under

s. 175 has the character of an act of benevolence towards the Exchequer. To avoid that the safest course is perhaps to make the term exceed fifty years, but this is not always desirable. If the term is to be seven years or less, then it is certainly expedient to ensure that the letting falls within s. 176, and therefore outside s. 175.

Perhaps the simplest way to do this is to make the lease cover property which is comprised in more than one unit of Sched. A assessment.

Example

A desires to let Blackacre for five years at a rent of £200 a year, taking a premium of £500 and bearing the usual landlord's burdens. The net annual value assessed for Sched. A is £100. The excess rents computation will be somewhat as follows:—

	£
Rent	200
Annual equivalent of premium, say	115
	£315
Statutory repairs allowance ..	56
	£259
Less Sched. A net annual value ..	100
Excess rent assessment	£159

Assume now that *A* stipulates that the lease shall also cover a defined portion (say, one-quarter) of some waste land some distance away, whose apportioned net annual value is £4. The rent is increased by £4 accordingly. The case is then outside s. 175. The s. 176 computation would be somewhat as follows:—

	£
Rent	204
Average expenditure on repairs and maintenance (say) ..	57
	£147
Less Sched. A net annual value ..	104
Excess rent assessment	£43

Settled land

The operation of s. 175 in relation to premiums causes especial difficulty where the lease is by a tenant for life of settled land. The Revenue make excess rent assessments on him as the "immediate lessor" within s. 175. But, of course, the premium goes not to the tenant for life but to the trustees.

Where the assessment is under Sched. A, the tenant for life, in the normal case, suffers no hardship since he bears tax only on the rent. Where as between himself and the Revenue he must pay Sched. D tax on the premium element, justice requires that he should be able to recover it from the trustees.

It is arguable that tax referable to the premium constitutes a claim "properly payable thereout" within the meaning of s. 73 (1) of the Settled Land Act, 1925, but there is no authority on the point and it raises considerable practical difficulties. It hardly seems possible to argue that the tax referable to the premium is a charge or expense incidental to the exercise of the lease-granting power, so as to be a proper application of capital money within s. 73 (1) (xx).

If the tenant for life has no means of recovering from the trustees any of the tax referable to premiums, it follows that not only is he paying tax on capital, but he is paying it on someone else's capital.

The life tenant and sur-tax

If no part of the tax on the excess rents can be recovered from capital, it follows that the life tenant will have to include the full amount of the excess rent assessments in computing his income for sur-tax. If, on the other hand, some equitable apportionment is allowed as between himself and the remaindermen, then logically the excess rent assessments should likewise be apportioned. The part of the assessment which is excluded from the computation of the life tenant's total income may or may not be subject to inclusion in the total incomes of the remaindermen, depending on the precise trusts.

Possible alternative treatment of premiums

There is a *dictum* of Clauson, L.J., in *B. G. Utting & Co., Ltd.* v. *Hughes* [1939] 2 K.B. 231, at pp. 245–6, to the effect that premiums on leases are separately assessable under Case III of Sched. D, by virtue of what is now s. 182 (1) (*e*) of the Income Tax Act, 1952, as "fines received in consideration of any demise of lands." The Revenue had argued that this provision was confined to fines on renewal of renewable leases.

Incidentally, s. 182 is expressed to apply only to "the following hereditaments and heritages." Since 1925 there have been no hereditaments, properly speaking, in England or Wales, apart, perhaps, from peerages. The precise scope of s. 182 is therefore a matter of some doubt.

If (which seems unlikely) premiums were assessed under s. 182, the hardship of the life tenant would disappear, since the trustees to whom the premiums were paid would be the assessable parties. On the other hand the assessment of a whole premium for the year of receipt, without any right of spreading, would work considerable injustice.

P. E. W.

A Conveyancer's Diary

BOUNDARIES—II

I CONCLUDED my previous article on *Hopgood* v. *Brown* [1955] 1 W.L.R. 213, and p. 168, *ante*, by saying that the case was decided on an estoppel. The circumstances which gave rise to the estoppel were as follows.

The two plots of land, which were originally sold as building plots in 1932 to a single purchaser, remained in the ownership of a single person until 1949. The plots had throughout this period remained unbuilt on. In 1949, the then owner sold, and subsequently conveyed, the southern plot to the defendant, and on the same day as that sale sold, and subsequently conveyed, the northern plot to a building company. The defendant had an interest in this building company, but not a controlling interest, the greater part of the shares in and the control of the company being then in the defendant's father. In 1951, the defendant had plans prepared for the erection of a bungalow and garage on the southern plot, and with these plans he approached the company, which then still owned the northern plot, with a view to agreeing the position which,

as a result of the proposed building, the boundary between the two plots would take, and also with a view to obtaining the company's agreement to build the bungalow and garage. (It may here be noted that the fact that the defendant was a director of the company at the time of this agreement was dismissed as irrelevant for the purposes of the estoppel which, as will be seen, was held to have arisen between the parties. The agreement to build was doubtless an ordinary commercial transaction as far as the company was concerned, and the agreement on the boundary was ancillary to it. Throughout this transaction, therefore, the company and the defendant can be taken to have acted at arm's length.)

A statement of the governing principle of estoppel which was adopted as accurate by the Court of Appeal in the present case is to be found in Bower on Estoppel (1923 ed.), at pp. 9 and 10, in the following terms: "From a careful scrutiny and collation of the various judicial pronouncements on the subject . . . the following general statement of the doctrine of estoppel by representation emerges: Where one person ('the representor') has made a representation to another person ('the representee') in words, or by acts and conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention . . . and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in the proper manner, objects thereto." The facts, as found by the county court judge and as accepted by the Court of Appeal, to which that principle was applied can be summarised quite shortly. The defendant had his plans for building on his own (southern) plot, but as the boundary between that plot and the company's (northern) plot was undemarcated, he wanted to make sure, and to obtain an assurance to that effect from the company, that the ground on which he proposed to build was included in his own plot and did not form part of the company's plot. This assurance the company gave, not expressly, but by its conduct in agreeing to build for the defendant in accordance with the defendant's plans. This was a representation by the company to the defendant. As Morris, L.J., pointed out in his judgment, if the company had said in terms to the defendant that it recognised that there was no visible boundary between the two plots and appreciated that the defendant wished to have an assurance that he could safely proceed to build in accordance with his projected plans without danger of being accused by the company of encroaching on its land, and that it was willing to give such an assurance, it would have been inconceivable that after the defendant had relied on the assurance and had paid the company for building according to his plans the company could have complained that the defendant was trespassing on its land. The company would have been estopped. The learned lord justice then went on to say that, although the company did not make express statements in the terms which he had suggested, the company did by its conduct impliedly represent that the defendant could safely proceed to build as he had planned, and the company would, therefore, at a later date have been estopped from alleging that the defendant had trespassed on its land.

The plaintiff in this case was a successor in title of the company, and it was held, on well established authority, that the disability on the company's part which would have prevented it from averring, in any litigation between the defendant and itself, that the boundary was in any other place than where the parties had put it, descended upon and bound the plaintiff. The result was that, on this ground, the plaintiff was not entitled to complain of the encroachment which, as mentioned in the previous article on this case, the building of the garage on the defendant's plot had made on the plaintiff's plot, if the plaintiff's plot were for this purpose regarded as the plot to which he had a paper title.

The reader will need no comment from me in recognising that on the estoppel point this was a very special case indeed. Encroachments over boundaries are not often made as part of a commercial bargain between adjoining plot owners. They are made much more usually *per incuriam*, by builders plotting out the ground and making a mistake in the identification of a boundary mark of some kind, a mistake which it is easy enough to make if the only plan of the land available is a small "for purposes of identification only" plan drawn on a conveyance. The defendant was fortunate in this case to be able to rely on circumstances which would not ordinarily have been available to a party in his place.

It may be said that where, as in this case, a boundary is deliberately left undemarcated in the muniments of title an owner would always be well advised to make certain of the boundary before he begins to build on or near what he takes to be the boundary. The conclusion of the Court of Appeal to which I referred last week, that, in the case of plots of land laid out as part of an estate for building, an undemarcated boundary will, in the absence of some indication to the contrary, be taken to be a straight line, is a common-sense decision of the kind which the layman could reach in many cases without the assistance of the court, and it is a little strange certainly that the defendant here felt himself entitled to build in such a fashion that the *de facto* boundary between the plots assumed the shape of an angle, instead of a straight line. To this extent, certainly, the encroachment in this case was unusual. But if the encroachment had taken the form of an advance of the boundary along its whole straight line into the plaintiff's plot, the result from the plaintiff's point of view might well have been the same, i.e., he might have found that the encroachment prevented him from erecting a garage behind his house because insufficient space was left for a passage to it between the side of the house and the building on the adjoining plot. The mistaken view of the alignment of his own boundary which the defendant entertained in this case, and which if it had not been for the estoppel point would virtually have lost him his newly erected garage, could well have arisen even if the mistaken boundary, had taken the form, more usual in cases of this kind, of a straight line.

Mistakes of this kind are therefore very easy, and if old plans are used after there have been changes in the situation, e.g., by the erection of buildings, there is a possibility of trouble not only between adjoining owners but between the purchaser of a particular plot and his vendor. It is true that unless the vendor (or a predecessor in title of the vendor) has estopped himself from setting up a title to the land encroached upon, as happened in this case, there would appear to be no cause of action in the purchaser as against the vendor after the completion of the purchase, and the circumstances in which an estoppel of this kind is likely to arise are not, as I have suggested, of frequent occurrence. But even short of action, a purchaser's complaint can lead a vendor into considerable expense and trouble, what with the correspondence that may pass between the parties or their advisers and the need of expert assistance in placing on the ground the boundary where the paper title indicates that it should be placed.

This suggests that in the appropriate case, that is to say, in sales of plots on estates or in areas which have recently been built upon, in the absence of a recent survey and demarcated boundaries, it may often be desirable to ask a purchaser whether he is satisfied that the description under which he is purchasing corresponds on the ground with what he thinks he is purchasing. After all, purchasers usually inspect the property, not once but several times, before purchase, and in many cases would be quite prepared to give an affirmative answer to such a question; and the answer could afford a valuable protection to the vendor in the event of subsequent dispute arising.

"A B C"

Landlord and Tenant Notebook

"POSSESSION WARRANT REVOKED"

THE above words constituted the concluding sentence of a county court judge's order, the validity of which was questioned in *Haymills Houses, Ltd.* v. *Blake* [1955] 1 W.L.R. 237 (C.A.); p. 169, *ante*. I have chosen them as my title because, as I will presently suggest, rather less prominence appears to have been given to this feature of the case than might be considered desirable.

The essential facts of the case were that the plaintiffs, landlords of a controlled flat let on a three-monthly agreement containing a right of re-entry on non-payment of rent, issued a plaint claiming possession by reason of such non-payment, and also claiming the arrears, on 28th August, 1954. The action was heard on 29th September, and the judge made an order that the defendant do give the plaintiffs possession on or before 27th October, unless the rent in arrear and costs be paid into court before that date. The defendant paid the rent but not the costs, and, on a date not specified in the report, the plaintiffs "applied for a warrant of possession." There does not appear to have been any reason why the warrant should not have been issued, and what we are told about it implies that it was. The defendant paid in the balance and then made an application to the court to suspend the *order* for possession. This application came on on 29th November, when the judge made a second order: ". . . that the time of the order of 29th September, 1954, be extended for a further twenty-eight days. Debt and costs have been paid; order, therefore, of 29th September, 1954, be extinguished. Possession warrant revoked."

The landlords appealed and contended that the judge had had no jurisdiction to revoke the order made on 29th September after it had become absolute.

The power to give a defaulting tenant "another chance" is contained in the Rent, etc., Interest Restrictions Act, 1923, s. 4 (2): "At the time . . . of the making or giving of any order or judgment for the recovery of possession . . . or in the case of any such order or judgment which has been made or given . . . and not executed at any subsequent time, the court may . . . postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment."

The issue might be expressed, by reference to the concluding words of the subsection, as whether, if such conditions are not complied with, the court can do anything about it. That the provision recognises or creates two kinds of order—absolute and conditional—is clear, and *American Economic Laundry, Ltd.* v. *Little* [1951] 1 K.B. 400 (C.A.) showed that conditional orders could be discharged only if the conditions were satisfied; but the decision was held not to warrant the proposition that a failure to carry out conditions converted a conditional order into an absolute one; and Evershed, M.R., went as far as to suggest, *obiter*, that an unexecuted absolute order might be the subject of an order postponing execution on conditions.

The interpretation placed upon the subsection may, I think, fairly be expressed in this way: its second part authorises the court, in the case of *any* order made and not yet executed, to stay execution or postpone the date of possession. That was all it amounted to. The language of the subsection is, as Evershed, M.R., said, inelegant; this complaint may well have been due to the different ways in which time is referred to: the court may act at the time of an application for an order, at the time of an order being made "or in the case of any such order or judgment which has been made or given . . . and not executed at any subsequent time." It is only, indeed, by inference that one can reach the conclusion that a tenant has a right to apply for postponement, etc., when he is not brought before the court by the landlord.

The effect of the decision is that a landlord in the position of the plaintiff company in *Haymills Houses, Ltd.* v. *Blake* may find himself confronted by three obstacles. First, there is the business of enforcing forfeiture; it is, of course, long since a proviso for re-entry meant what it said, and the County Courts Act, 1934, also merely modifies, for county court action purposes, the code introduced by the Common Law Procedure Act, 1852, ss. 210, 211, which were themselves enacted in order to put an end to the uncertainty surrounding the attitude of Equity. The Judicature Act, 1925, s. 46, is in more general terms. All three statutes have what might be called the suspended animation effect; it was, at one time, the practice to make a landlord execute a new lease when forfeiture had been incurred and relief granted, and logic may be said to sanction such practice; but the words "according to the lease thereof made, without any new lease," "according to the terms of the lease and without the necessity of any new lease," and "according to the lease without any new lease" occur in the Common Law Procedure Act, 1852, s. 212, the Judicature Act, 1925, s. 46, and the County Courts Act, 1934, s. 180 (1) (*a*), respectively. The importance of this, in *Haymills Houses, Ltd.* v. *Blake*, was that, while the first order, that of 29th September, 1954, did not convert the contractual tenancy into a statutory one, non-compliance with its conditions had, it was conceded, that effect on 27th October.

The second obstacle is the fetter placed on the jurisdiction of the courts by s. 3 (1) of the Rent, etc., Restrictions (Amendment) Act, 1933; the landlord has yet to prove a "ground for possession," which may be the same facts as those occasioning the forfeiture, and then has to show that it is reasonable to make the order.

And, thirdly, there is this obstacle of extension and new conditions which the plaintiffs in *Haymills Houses, Ltd.* v. *Blake* failed to negotiate.

Now to deal with this question of revocation of warrant, which has rather intrigued me: the operative words of such

a warrant (addressed to the registrar and bailiffs) are, I may say: "These are to authorise and require you forthwith to give possession of the said land to the plaintiff"; and it is issued under Ord. 26, r. 71, of the County Court Rules, 1936, which says that a judgment or order for the recovery of land *may be* enforced by warrant of possession in Form 200. There is, I may also say, no express provision for revocation of a warrant, and the registrar is obliged to supply the execution creditor with such information as he may reasonably require (Ord. 25, r. 10 (3)); but I will assume that power to revoke is either inherent or is impliedly conferred by rent control legislation, and also that "forthwith" means, as most decisions show that it means, as soon as is reasonable in the circumstances; and that the defendant made his application before that period had elapsed. But what would have been the position if, instead of or after applying for a warrant, the plaintiffs had decided to try some private enterprise, and had the defendant removed by persons who had made a special study of Cole on Ejectment, *Hemmings* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720 (C.A.), and other authorities on the amount of violence permissible? They could say that on 28th October, 1954, the defendant was neither a contractual nor a statutory tenant; and *Jones* v. *Foley* [1891] 1 Q.B. 730—a case in which a landlord removed the roof of premises after obtaining a justices' order under the Small Tenements Recovery Act, 1838, and did so before the twenty-one days had expired—shows that by invoking the machinery of justice a landlord does not lose his rights of peaceable re-entry. See also *Aglionby* v. *Cohen* [1955] 2 C.L. 396a; *The Times*, 24th February, 1955.

Peaceable re-entry is, in the case of controlled premises, illegal, as was held in *Remon* v. *City of London Real Property Co., Ltd.* [1921] 1 K.B. 49 (C.A.); and damages were awarded against a landlord who had resorted to the removal of doors and windows in *Lavender* v. *Betts* (1942), 167 L.T. 70. But those were cases in which, while contractual tenancies had determined, the tenants had become statutory ones; in *Haymills Houses, Ltd.* v. *Blake* the statutory tenancy had, by reason of the tenant's failure to satisfy the conditions of the order of 29th September, ceased to exist on 28th October. The Rent Acts do not protect trespassers; the tenant had not got the protection of an order (*American Economic Laundry, Ltd.* v. *Little*, *supra*), and, in my submission, the only way in which the defendant would have been able to seek redress would be by invoking the same provision and contending that at the time of his application there was an order or judgment which had not been "executed." And if the effect is that a landlord of a trespassing ex-tenant of controlled premises must enforce his judgment by a warrant of possession or not at all, that effect is achieved in a very roundabout way.

R. B.

HERE AND THERE

HIC NON JACET

On 4th March the *London Gazette* published what, I suppose, is the final official obituary of the Piltdown Man, or maybe Woman, for there were those who would have had it that this first presumed Briton was female. It is an official notice that the Piltdown Skull Site in the Parish of Fletching, in the County of Sussex, "containing 426·25 square yards or thereabouts" has "ceased to be held by the Nature Conservancy and to be managed as a Nature Reserve" within the National Parks and Access to the Countryside Act, 1949. Thus, then, passes the glory of Piltdown which, until not so very long ago, could be described as "a household name, within the compass of whose eight letters the cream of British archaeology may be included." Well, it's no use crying over spilt cream, especially when it has gone as sour as this. The Piltdown Man has now been officially adjudicated bankrupt; his assets have been found valueless and it is inconceivable that he should ever obtain his discharge. Even this, his Fletching freehold (now found not to have been in his possession for anything like as long as his title seemed to suggest) has been, as it were, disposed of for the benefit of his creditors, in the sense of those who gave him credit. That credit, as now known, was obtained on false pretences. But the false pretences were not his. If he was a pretender it was another that placed upon his head a fruitless crown thence to be wrenched with an unlineal hand. Everyone who has had anything to do with litigation knows that in every action there is always a story behind the story that comes out in court and that it is scarcely ever told. Now that the Piltdown Man has been relegated to his authentic status of an assortment of not so very old bones the interest of researchers and investigators has shifted to his impresario (if we may so call him), the late Charles Dawson, solicitor, of Uckfield. We are only just beginning to make his acquaintance. Ultimately, it may well be far more rewarding than that of his *protégé*.

WOMEN'S WEEK

Every now and then the current items of legal news seem to be dominated quite fortuitously by one particular group or topic. Just now it has been Women's Week, with enough topics to provide chatty, whimsical, practical or informative articles for a whole issue of any women's paper. There's Women and Beauty, Women and Jewellery, Women and Fortune Telling, "How to Support a Family", "Father and Daughters" (discipline), "Nappies in Sink" (a baby care item), "She Swots to Regain Husband" (plot for a short story), "The Thoughtless Bus Conductress" (subject for a little trite homily, maybe in verse), the breach of promise action fifty years after (an Edwardian period piece to be written up with vignettes of Guildford Fair), the woman J.P.—probably Marghanita Laski could handle her story. Some of the more recondite items you may have missed. The text for the Woman and Beauty article would be a recent award of $11,800 damages at Hartford in Connecticut to a woman whose nose had been broken in a car smash and who could no longer use cosmetics. "It is the prerogative of a woman to improve her appearance," said Judge Abraham Bordon. "Deprivation of this can easily lead to mental anguish far greater than painful bodily injury." The starting point for the article on Women and Jewellery might be the action of a New York jewel firm to recover from Miss Linda Christian, the actress, £45,000 of jewellery, a gift from a friend. The court has upheld her refusal to reveal its whereabouts. "How to Support a Family" could start off with the simple device practised by a blonde young lady of twenty-one in San Francisco. She made $25 a week simply by telling strange men, "I've lost my purse and need money to get home." She must have needed every cent of it, for when charged in court with begging she pleaded that she did it to support her boy friend, her ex-husband, her mother and her three children all living together in a house worth £5,000. She appeared in court in a fur coat. The judge courteously asked her if she wanted to be sentenced right away and she answered, "I think I'll wait. I'm too nervous now."

MIXED TOPICS

OVER to this side of the Atlantic for the case of Agnes Morrison, the fortune-telling gipsy, and her client, Agnes Gracie, of Dumfries. (All good magazines have their fortune tellers.) A shilling and a packet of tea were, in this case, an insufficient fee for forecasting the future. The oracle, curiously mingling the preternatural with the domestic, demanded also a tablecloth and when it was refused threatened to put a spell on it to make it fall into holes. She foretold for the young lady marriage within two years and two children, and for her friend a pass in his driving test. The prophecies may come true (they are not out of time yet) but the prophetess pleaded guilty to a charge under the Fraudulent Mediums Act and was fined £5. For its article on the never-shelved problem, "Should Parents Obey Their Children?" (or *vice versa*) the week provides a good starting point in the news that Sir Andrew Clark, Q.C. (principally known to the general public as the father of two lovely daughters) has been heard to say: "I'm a very unpopular man because I have insisted that my daughter Susan has a midnight curfew on two days a week. Anyway, I can't think how the young men find enough money to take the girls out nowadays." The baby care article might be contributed by a guest contributor, the judge of the Wandsworth County Court who has just given a woman to understand that she will be evicted if she continues to wash her baby's nappies in the sink. "How" is the natural follow on to "how not." The bus conductress who was fined £3 at Slough for ringing the bell while an old woman was clinging to the handrail boarding could figure in a little moralising verse beginning

"A helping hand upon the bus
Can make life radiant for us . . ."

The short story could be taken from a rather touching case at Wimbledon Juvenile Court where a mother, said to have habitually got up too late to launch her child off to school, explained that she was tired out spending all the day studying in the public library because "I hope that if I educate myself my boy's father will return and settle down with me." If ever one read on in the hope of a "happy ending" it would be in the case of that story.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

"With Growing Reluctance"

Sir,—I have read with interest Mr. Claude Hornby's letter in your issue of the 5th March. May I give a specific case in support?

I recently acted for a man under a defence certificate charged with wounding with intent to do grievous bodily harm. I did not appear for the accused in the magistrates' court.

The accused having been committed for trial in custody, it was necessary to interview him in H.M. Prison, Liverpool, necessitating a whole day's absence from the office. It was also necessary to interview him further, but on this occasion I made arrangements for him to be brought to Stafford Assize Courts specially. This only involved half a day's absence from the office.

Two other witnesses were interviewed, and statements taken, the brief drawn and delivered to counsel.

The case was heard at Stafford Assizes, being called on at 2.15 p.m. and finished at 6.45 p.m. The accused was acquitted.

For this, I received £7 1s. 9d. and counsel £4 17s., the maximum fees allowable. (I received, of course, my travelling expenses to Liverpool and Stafford.)

Neither the solicitor's nor counsel's remuneration seems very fair—especially as counsel had travelled from London to Stafford and would have probably one night's hotel accommodation to find out of his princely fees!

I, like other solicitors who undertake this work, feel that it is grossly underpaid and that steps should be taken to remedy the matter.

R. F. RIGBY.

Newcastle,
Staffordshire.

Counsel's Opinion in Duplicate

Sir,—The suggestion by Mr. A. P. Arnold in your issue of the 5th March that counsel's opinion should be given in duplicate is an excellent one.

Clients in many cases like to study counsel's opinion, and a flimsy carbon copy sent with the top copy of the opinion would be of much assistance.

I make the suggestion that in asking for counsel's opinion solicitors might make the modest request for a carbon for the client and possibly another for legal aid in such matters where a legal aid application is contemplated.

A. E. HAMLIN.

Sheringham,
Norfolk.

BOOKS RECEIVED

Far Morning. A Novel by EDWARD GRIERSON. 1955. pp. 248. London: Chatto & Windus, Ltd. 12s. 6d. net.

Heap on the Town and Country Planning Act, 1954. By DESMOND HEAP, LL.M., L.M.T.P.I., Comptroller and City Solicitor to the Corporation of London. 1955. pp. xv and (with Index) 234. London: Sweet & Maxwell, Ltd. £1 10s. net.

Ranking & Spicer's Company Law. Tenth Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and T. W. SOUTH, B.A., of the Middle Temple, Barrister-at-Law. 1955. pp. xlvii and (with Index) 491. London: H. F. L. (Publishers), Ltd. £1 5s. net.

Stevens' Elements of Mercantile Law. Twelfth Edition. By JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law. 1955. pp. lxiv, 662 and (Index) 82. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

Continuous Auditing. By ANGUS MACBEATH, C.A., A.C.W.A. 1955. pp. (with Index) 125. London: Gee & Co. (Publishers), Ltd. 17s. 6d. net.

Sex, Literature and Censorship. Essays by D. H. LAWRENCE. Edited by HARRY T. MOORE. With Introductions by HARRY T. MOORE and H. F. RUBINSTEIN. 1955. pp. 269. London: Melbourne: Toronto: William Heinemann, Ltd. 15s. net.

Six Ventures in Villainy. By JACK SMITH-HUGHES, of the Inner Temple, Barrister-at-Law. 1955. pp. xi and 227. London: Cassell & Co., Ltd. 15s. net.

Encyclopædia of Planning, Compulsory Purchase and Compensation. Revision 2—21st February, 1955, for Vol. 1 (Planning) and Vol. 2 (Compulsory Purchase and Compensation). London: Sweet & Maxwell, Ltd.

Woodfall's Law of Landlord and Tenant. Supplement to Twenty-Fifth Edition (to 1st February, 1955). By LIONEL A. BLUNDELL, LL.M., of Gray's Inn, Barrister-at-Law, and V. G. WELLINGS, M.A. (Oxon), of Gray's Inn, Barrister-at-Law. London: Sweet & Maxwell, Ltd. 6s. 6d. net.

Latey on Divorce. The Law and Practice in Divorce and Matrimonial Causes. Supplement to Fourteenth Edition (to 1st January, 1955). By WILLIAM LATEY, Q.C., M.B.E., and JOHN B. GARDNER, M.A., Barrister-at-Law. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Hanson's Death Duties. Sixth Cumulative Supplement to Ninth Edition (to 3rd September, 1954). By JACKSON WOLFE, LL.D., of Lincoln's Inn, Barrister-at-Law, and HENRY E. SMITH, LL.B., of the Estate Duty Office. 1955. pp. xvi and (with Index) 240. London: Sweet & Maxwell, Ltd. £1 1s. net.

REVIEWS

The Solicitor's Guide to Development and Planning, incorporating the provisions of the Town and Country Planning Act, 1954, and the Regulations. Second Edition. By R. N. D. HAMILTON, LL.B., Deputy Clerk to the Buckinghamshire County Council. 1955. London: The Solicitors' Law Stationery Society, Ltd. £1 2s. 6d. net.

The author of this book requires no introduction to readers of THE SOLICITORS' JOURNAL. For several years he has specialised in this subject and has written many useful articles.

This is undoubtedly the best book for use by a solicitor requiring a sound outline of planning law, particularly for use in connection with conveyancing transactions. Although the passing of the Town and Country Planning Act, 1954, provides the occasion for the publication of a second edition, the book contains a well balanced account of planning law as a whole. For instance, there is a full explanation of the rules affecting enforcement notices which is written very much from the point of view of the solicitor in private practice who is consulted in connection with such a notice. Such headings as "The Seven Tests to Apply to a Notice" and "Challenging a Notice" describe the excellent practical advice. Not the least useful part of the book is the last chapter, on conveyancing practice, which sets out the main questions and states in as simple a form as possible the manner in which they can be answered.

The book is accurate and holds a good balance between the necessity for giving a full explanation of important rules and the danger of making the text inconvenient for use by including too much detail. The only criticism we would offer is that unfortunately it went to press before the Town and Country Planning (Mortgages, Rent Charges, etc.) Regulations, 1955, were published. Although these regulations deal mainly with matters of detail, some references would have been helpful.

Oyez Practice Notes, No. 7: Powers of Attorney. By CHARLES CAPLIN, LL.B., Solicitor, assisted by ARNOLD WEXLER, LL.B., Solicitor. Second Edition, by J. F. JOSLING, Solicitor. 1954. London: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

In the second edition of this useful booklet, opportunity has been taken to bring the text up to date wherever necessary. In particular, the expiration of the "war period" for the purpose of the Evidence and Powers of Attorney Act, 1940, and the consequences of such expiration have been duly noted. Fortunately for the protection of agents generally, the law of agency undergoes little change, but the effect of the case of *Barclays Bank, Ltd.* v. *Bird* [1954] 2 W.L.R. 319; 98 SOL. J. 145, on the powers of a donee of an irrevocable power of attorney has been introduced into the text in the appropriate places. The bibliography also includes articles published since the date of the first edition, and the appendix of forms continues to be as useful as ever.

Oyez Practice Notes, No. 36: Obtaining Letters of Administration. By D. R. LE B. HOLLOWAY, LL.B. (Hons.), of the Principal Probate Registry. 1954. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

We welcome this companion to Mr. Holloway's earlier book in the series, Proving a Will, which has already reached its second edition. The new book follows the same general lines and includes full notes and directions on how to obtain a grant, the oath for administrators, proof of death, commorientes, joint grants and life and minority interests, settled land grants, bonds, the various kinds of limited grants of administration, disputes over the right to a grant, and many other headings. Although obviously not intended to cover the same all-embracing field as the standard practices, a surprising degree of completeness has been achieved in a relatively small compass. The book is of particular value in that it incorporates not only the changes in the law brought about by the Intestates' Estates Act, 1952, but also the changes in practice consequent thereon, and also those contained in the latest revision and consolidation of the Non-Contentious Probate Rules which came into operation on 1st October, 1954.

The Young Lawyer. By JOHN L. CLAY, M.A. (Oxon), of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law, JOHN B. FRANKENBURG, M.A. (Oxon), of the Inner Temple and the Oxford Circuit, Barrister-at-Law, and JOHN A. BAKER, M.A., B.C.L. (Oxon), Solicitor. 1955. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

The wholly admirable object of this book is to be of assistance to those considering a legal career and deciding which branch of the profession to follow, and to those who have made their decision and have just begun at the bottom of their selected branch. Our solicitor readers, then, will be more interested in the work as a subject of recommendation to others than as a book to read. Their recommendation may be whole-hearted. This is not, as the authors point out, a book of law. But it is full of the most excellent advice grafted on to accurate data concerning the entry into either calling, and the everyday work of the novitiate. The authors have contrived to say some very useful things about work in offices, chambers and courts without unduly duplicating material to be found in the standard text-books and in other students' guides.

The Essentials of Domestic Law in Summary Courts. By E. R. GUEST, M.A., B.C.L., Barrister-at-Law, a Metropolitan Magistrate. 1955. London: The Technical Press, Ltd. 2s. net.

This book has been written as a guide to lay magistrates on the law in relation to the commoner types of matrimonial offences with which they deal in their domestic courts. Mr. Guest, in sixteen pages, has succeeded in giving the outlines of the law relating to desertion, neglect to maintain, persistent cruelty and adultery and we think that lay magistrates will find this a lucid and helpful guide. It is short but we do not think that the matters dealt with by Mr. Guest could have been better explained. The book can be commended to all laymen who sit as magistrates. So far as solicitors are concerned, the book is obviously not intended as a text-book, for no cases or statutes are cited, but it can profitably be read by a young clerk in a solicitor's office.

The Brewing Trade Review Law Reports, 1951-1953. A Record of Judicial Decisions affecting the Brewing and Licensed Trades. 1954. London: The Review Press, Ltd. £3 10s. net.

As has been the practice since 1913, cases of special interest to the brewing and licensed trades have been republished from the *Brewing Trade Review*, and the present volume covers the years 1951 to 1953. Altogether there are some seventy cases under the seven main headings of licensing, rating, taxation, landlord and tenant, town planning, innkeepers' liabilities and duties, and miscellaneous. There is also a cumulative index which enables reference to be made to all cases contained in the past and current volumes.

The Lawyer's Remembrancer and Pocket Book. By ARTHUR POWELL, K.C. Revised and edited for 1955 by J. W. WHITLOCK, M.A., LL.B., assisted by S. H. W. PARTRIDGE, M.A. 1954. London: Butterworth & Co. (Publishers), Ltd. 13s. 6d. net.

It is very difficult to add to what has been said in previous notices of this little book. Praise of it has been expressed in many ways, and there has been very little adverse criticism. With this verdict, recorded over a number of years, we cordially agree.

The annual dinner of the MID-ESSEX LAW SOCIETY was held at Chelmsford on 24th February, when the president, Mr. W. J. Bailey, welcomed some 116 members and their guests. The Society were honoured by the presence of the Hon. Mr. Justice Cassels, who was accompanied by the High Sheriff of Essex, Col. P. V. Upton, M.B.E., T.D., D.L., J.P.; His Honour Judge Geoffrey Howard; the Right Hon. Viscount Hailsham, Q.C.; Sir Sydney Littlewood (representing the President of The Law Society); Mr. Horsfall Turner, Senior Under-Secretary of The Law Society; the presidents of the Suffolk and North Essex Law Society (Mr. F. E. M. Puxon) and West Essex Law Society (Sir Eric Edwards); the vice-president of the Southend-on-Sea Law Society (Mr. S. H. Bates); and representatives of the surveyors, auctioneers and other professional bodies in Essex.

TALKING "SHOP"

PLAIN TALES FROM THE SHELVES—VI

Sir Walter Raleigh

"Bless my soul"—as Goddard, L.C.J., is wont (as reported) to remark of singular arguments addressed to him by learned counsel—if we have not, in this series, neglected the State Trials. Not that, properly speaking, many of them pass muster as "plain tales," and it may be objected that what one knows of them is all too well remembered to deserve further study. But even on a voyage of discovery the ship must touch at recognised ports of call. Any reader so persevering as to have followed me through the first five of this series is unquestionably eligible for a short stroll ashore in more familiar surroundings.

The trial of Sir Walter Raleigh is by no means a favourite of mine, for the confused plots create much the same blurred impression as does the cloak and daggery of a secondary film; the characters, too, behave in much the same incomprehensible way. However, if any one is minded to study the "Main" (that is, the plot with which Raleigh was charged) or the Bye, otherwise the "surprizing treason" (wherewith he was not), let him consult the pages of the Howells. We are concerned with other matters.

The interest of the case will vary from one reader to another, but for myself I find it in the exchanges between Sir Edward Coke (then Attorney-General) and the prisoner at the bar. To adopt the expression of Sir James Stephen, Coke conducted the prosecution with "rancorous ferocity." In contrast, no prisoner on trial for his life has ever shown a sharper or more ready wit, nor I think, with the exception of King Charles I, a more dignified bearing than Raleigh did. Here is a passage at arms:—

Attorney: I think you meant to make Arabella a Titular Queen, of whose Title I will speak nothing, but sure you meant to make her a stale. Ah! good lady, you could mean her no good.

Raleigh: You tell me news, Mr. Attorney.

Attorney: Oh, sir! I am the more large, because I know with whom I deal: for we have to deal to-day with a man of wit.

Raleigh: Did I ever speak with this lady?

Attorney: I will track you out before I have done. Englishmen will not be led by persuasion of words, but they must have books to persuade.

Raleigh: The Book was written by a man of your profession, Mr. Attorney.

Attorney: I would not have you so impatient.

Raleigh: Methinks you fall out with yourself; I say nothing.

This book, by the way, was alleged to contain treasonable libels on the king, and one of the more delightful features of the case is that Raleigh had "borrowed" it from—of all places—the house of the late deceased Lord Treasurer, father to Lord Cecil, chief minister of the Crown and probable sponsor of the trial. Thus Cecil was put to fulsome explanations of how his father came to have such a book in his house. ("I need make no apology in behalf of my father considering how useful and necessary it is for privy-counsellors . . . to intercept and keep such kind of writings; for whosoever should then search his study may in all likelihood find all the notorious Libels that were writ against the late Queen; and whosoever should rummage my Study, or at least my Cabinet, may find several against the king, our Sovereign Lord, since his accession to the throne.") There were also a few comments upon the deplorable habits of book-borrowers: "I must needs say, Sir Walter used me a little unkindly to take away the book without my knowledge." No doubt Sir Walter thoroughly enjoyed the situation. In any case, according to him:—

Raleigh: Here is a Book supposed to be treasonable; I never read it, commended it or delivered it, nor urged it.

Attorney: Why, this is cunning.

Raleigh: Every thing that doth make for me is cunning, and every thing that doth make against me is probable.

The following passage shows Sir Edward Coke at his worst, but I do not think it is unfair to cite it, for by and large he was at his worst throughout the trial. It is difficult to recognise the later Chief Justice of the Common Pleas and Chief Justice of the King's Bench.

Raleigh: I never had intelligence with Cobham since I came to the Tower. [Lord Cobham, already convicted, and said to have been a principal conspirator with Raleigh in the "Main".]

Attorney: Go to, I will lay thee upon thy back for the confidentest traitor that ever came at bar. Why should you take 8,000 crowns for a peace?

Lord Cecil: Be not so impatient, good Mr. Attorney. Give him leave to speak.

[*Contemporary reporter's note:* Here Mr. Attorney sat down in a chafe and would speak no more until the Commissioners urged and intreated him. After much ado, he went on . . . and at the repeating of some things Sir Walter Raleigh interrupted him and said he did him wrong.]

Attorney: Thou art the most vile and execrable traitor that ever lived.

Raleigh: You speak indiscreetly, barbarously and uncivilly.

Attorney: I want words sufficient to express thy viporous treasons.

Raleigh: I think you want words indeed, for you have spoken one thing half a dozen times.

Attorney: Thou art an odious fellow, thy name is hateful to all the realm of England for thy pride.

Raleigh: It will go near to proving a measuring cast between you and me, Mr. Attorney.

Well, for the honour of the profession, we will spare readers any more of this devastating repartee; Mr. Attorney was doubtless beginning to rue his opening banter about a man of wit. But there were more shocks to come. Perhaps the worst was towards the end of the trial, in the home stretch as it were, when Raleigh produced from his pocket Cobham's recanting second letter: "*God have mercy upon my soul,* as I know no treason by you." Newspaper reporters of to-day would put it down as "sensation in court." The sixteenth century scribe employed in a startled footnote what was doubtless the current cliché, for we have met it once already: "*Here was much ado,* Mr. Attorney alledged that his last letter was politicly and cunningly urged from Lord Cobham and that the first was simply the truth . . .", etc. But even at this critical moment, the irrepressible Raleigh could not contain himself:—

Raleigh: Now I wonder how many souls this man hath. He damns one in this letter, and another in that."

And there I will take leave of the subject. Raleigh was sentenced to be hanged, drawn and quartered, but his sentence

was deferred *de die in diem* and he remained a prisoner in the Tower for some thirteen years. On his release in 1616 he embarked on the ill-fated Orinoco expedition. Returning under the shadow of disgrace and learning that a warrant had been issued for his arrest, he made abortive, and (one suspects) half-hearted, attempts to escape his long-awaited fate. Nothing had succeeded like success in the reign of the Virgin Queen, and now nothing was failing him like failure. His plea of an implicit royal pardon of the old attainder by virtue of his late commission overseas was overruled by the Lord Chief Justice (none other than Sir Edward Coke) and he was beheaded on the following day, 29th October, 1616.

I had intended to say something more of the trial of Charles I, but on reflection the preposterous features that we have been considering would consort ill with its sombre dignity. I will, therefore, leave the subject to the next of this series.

"ESCROW"

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

RENT RESTRICTION: EXISTING FURNISHED TENANCY: SUBSEQUENT UNFURNISHED TENANCY WITH BENEFIT OF FURNISHED TENANCY: STANDARD RENT

Anspach *v.* Charlton Steam Shipping Co., Ltd.

Denning, Birkett and Parker, L.JJ. 28th January, 1955

Appeal from Marylebone County Court.

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 12 (1) (as amended by the Act of 1939) provides: "(*a*) the expression 'standard rent' means the rent at which the dwelling-house was let on 1st September, 1939, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said 1st September, the rent at which it was first let." In 1940, whilst there was already in existence a furnished letting of a flat at £190 per annum, the owners, *K* Co., granted to *C. W. B.* Co. a five years' lease of the flat, unfurnished, at £115 per annum, with the benefit of the existing furnished tenancy. The two companies were closely associated and had some directors in common. In 1945 the present landlords bought the freehold and continued to let the flat furnished until September, 1951, when an unfurnished tenancy of the flat was granted at £275 per annum. There had been no unfurnished letting of the flat prior to 1940. The tenant applied to the county court for a determination of the standard rent. The judge held that the rent was fixed by the lease of 1940, and was therefore £115 per annum. The landlords appealed.

DENNING, L.J., said that the landlords contended that the letting of 1940, while it was a real letting and not a sham as in *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* [1944] K.B. 96, was not a transaction of a kind contemplated by the Acts, as it was made between two companies of a financial nature and was no guide to the rental value of the premises; in the cases establishing that furnished lettings, business lettings and unlawful lettings were not material for the purposes of standard rent the courts had written a gloss on the Act, and to determine the standard rent one must look at the nature of the letting and see whether it was of the kind contemplated by the Acts. It was not correct to say that the only letting material for fixing a standard rent was a letting to a tenant in actual occupation; it was not so fixed in *Edgware Estates, Ltd.* v. *Coblentz* [1949] 2 K.B. 717. In the present case the furnished letting must be ignored, and there remained the lease at £115, which came within the very words of the Act. It was next contended that as the flat was let furnished to an occupying tenant in 1940 it was taken out of the Act for all purposes. But while a furnished letting took the flat out of the Act for eviction purposes (*Prout* v. *Hunter* [1924] 2 K.B. 736) it did not take it out of the Act so far as standard rent was concerned. Lastly, it was said that the lease of 1940 was a letting for business purposes, and so outside the Acts. But it was a letting of a dwelling-house as a separate dwelling, and was not deprived of that character simply because the lessee was a company who could only occupy by servants, agents or sub-tenants (*Prout* v. *Hunter, supra*). The appeal, accordingly, failed.

BIRKETT and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *L. A. Blundell* (*J. F. Coules & Co.*); *J. Wilmers* (*T. F. Peacock, Fisher, Chavasse & O'Meara*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 601]

PROFITS TAX: REIMBURSEMENT OF PRINCIPAL COMPANY BY SUBSIDIARY: DEDUCTION FOR INCOME TAX

Gahan (Inspector of Taxes) *v.* Chloride Batteries, Ltd.

Evershed, M.R., Jenkins and Morris, L.JJ. 18th February, 1955

Appeal from Upjohn, J.

Chloride Batteries, Ltd., was a wholly owned subsidiary of Chloride Electrical Storage Co., Ltd. The subsidiary commenced business on 1st January, 1950, and made up its first accounts to 31st December, 1950. The principal company served a grouping notice under s. 22 of the Finance Act, 1937, which was accepted by the Inland Revenue Commissioners. Thereafter, for purposes of profits tax, the profits of the subsidiary company were treated as the profits of the principal company. On this basis the principal company paid £209,437 profits tax for the chargeable accounting period ended 31st December, 1950. The subsidiary company paid to the principal company £191,420 "by way of reimbursement of profits tax." The companies then made a joint election under s. 38 (3) of the Finance Act, 1947. The subsidiary company claimed that, for the purpose of assessment to income tax under Case I of Sched. D, for the years 1949–50, 1950–51 and 1951–52, it was entitled to deduct the whole of the amount of the profits tax paid by the principal company, £209,437, though the claim was, in fact, limited to £191,420, that is, the amount which the subsidiary would have had to pay if no grouping notice had been served, and which it appeared to the directors of the subsidiary company that they ought to reimburse to the principal company. The Crown contended that only the difference, that is, £77,695, between the amount which was actually assessed on the principal company and the amount which that company would have been called on to pay if no notice was served, £131,742, could be deducted by the subsidiary. The Special Commissioners upheld the taxpayer company, and on appeal Upjohn, J., affirmed that decision. The Crown appealed.

EVERSHED, M.R., said the permissible deduction for purposes of income tax was to be "an amount by way of reimbursement of profits tax which by virtue of the notice having been given is payable" by the principal company, that is, the amount which was attributable solely to the giving of the notice, which would not have been payable by the principal company if the notice had not been given; in other words, it was the increase in the total amount of profits tax payable by the principal brought about by the grouping notice, as distinct from the prior obligation to profits tax of the principal company. That construction of s. 38 (3) (*b*) was emphasised by the absence in the vital phrase of the definite article "the" in contra-distinction from sub-para. (ii) where "*the* profits tax" was referred to. Alternatively, there was a real ambiguity and the court could then have regard to the general tenor of the sections and the rights conferred, and to the anomalies to which the taxpayer company's construction could give rise—all of which supported the reading which his lordship thought to be correct.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed. Leave to appeal.

APPEARANCES: *J. Millard Tucker*, Q.C., *Sir Reginald Hills* and *J. H. Stamp* (*Solicitor of Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *H. Major Allen* (*Simpson, North, Harley & Co.*, for *March, Pearson & Green*, Manchester).

[Reported by Miss E. DANGERFIELD Barrister-at-Law] [1 W.L.R. 277]

PROFITS TAX: LIABILITY OF SUBSIDIARY COMPANY WHERE PRINCIPAL EXEMPT

Heelex Investments, Ltd. *v.* Inland Revenue Commissioners

Evershed, M.R., Jenkins and Morris, L.JJ. 18th February, 1955

Appeal from Upjohn, J. ([1954] 1 W.L.R. 1368; 98 SOL. J. 788).

Heelex Investments, Ltd., was a wholly-owned subsidiary company of Sidcup Investments, Ltd. On 28th September, 1948, Sidcup Investments, Ltd., the principal company, gave a "grouping" notice, which was accepted, to the Inland Revenue Commissioners under s. 22 of the Finance Act, 1937, requiring that the profits of the subsidiary, Heelex Investments, Ltd., should be treated as the profits of the principal company, for the purposes of profits tax. As a result of giving the notice, assessments to profits tax for the years 1947, 1948 and 1949 were made on Sidcup Investments, Ltd., in respect of both companies and the tax was paid. By a notice given in September, 1952, the Commissioners directed, pursuant to s. 21 of the Finance Act, 1922, that the income of Sidcup Investments, Ltd., for each of the years 1946–47 to 1948–49 should be deemed to be the income of the members, and apportioned accordingly. On the footing that when the direction was made all the members of Sidcup Investments, Ltd., were individuals, the income of Sidcup Investments, Ltd., became exempt from liability for profits tax by virtue of s. 31 (2) of the Finance Act, 1947. The Inland Revenue Commissioners repaid the tax already paid but made assessments for profits tax on the subsidiary company for the profits for the chargeable accounting periods ending in 1948 and 1949. On appeal to the Special Commissioners it was contended on behalf of Heelex Investments, Ltd., that the effect of the grouping notice given in 1948 was that there were no profits assessable to profits tax of that company for these years. The Crown contended that, where the principal company had become exempt from profits tax, the provisions of s. 22 (2) of the Act of 1937 were not operative as there was an inherent assumption that the principal company must be liable for profits tax or s. 22 would not operate. On appeal to Upjohn, J., from the decision of the Special Commissioners affirming the assessments, the assessments were discharged. The Crown appealed.

JENKINS, L.J. (delivering the first judgment), said that there was no justification for holding that the subsidiary company was liable to profits tax on the ground that the exemption of the principal company by implication suspended or defeated the operation of, and effect of, the grouping notice, and there was nothing in s. 22 of the Act of 1937 justifying an assumption that the operation of the section was limited to cases where profits tax would be exigible. The words "for the purpose of the provisions of this Act relating to" profits tax meant "for the purpose of ascertaining what profits tax, if any, would be exigible on the profits of the principal and subsidiary companies respectively." His lordship referred to observations in *Inland Revenue Commissioners* v. *Birmingham District Power and Traction Co., Ltd.* (1928), 141 L.T. 1, which, though not binding, he said tended to support the view submitted on behalf of the subsidiary rather than that put on behalf of the Crown.

EVERSHED, M.R., and MORRIS, L.J., agreed. Appeal dismissed.

APPEARANCES: *Geoffrey Cross*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *L. C. Graham-Dixon*, Q.C., and *John Creese* (*Titmuss, Sainer & Webb*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 289**

SALE OF GOODS: EXPORT LICENCE: CONTRACT MADE IN LONDON: SHIPMENT FROM FOREIGN PORT: DUTY TO APPLY FOR LICENCE

M. W. Hardy & Co., Inc. *v.* A. V. Pound & Co., Ltd.

Lord Goddard, C.J., Singleton and Romer, L.JJ.

25th February, 1955

Appeal from McNair, J.

By a contract of sale made in this country, the buyers agreed to buy from the sellers 300 metric tons of Portugal Gum Spirits of Turpentine f.a.s. buyers' tank steamer at Lisbon, payment by confirmed irrevocable credit in sellers' name in Lisbon. When the contract was made, the sellers knew that the destination of the goods was Rostock, in Eastern Germany. The buyers duly sent a tank steamer to Lisbon where the goods had been assembled by the sellers' Portuguese suppliers. Under Portuguese law, turpentine could not be exported without an export licence, which had to be obtained by the suppliers. The sellers' suppliers applied to the Junta for a licence to export to Rostock, which was refused, and the turpentine could not be delivered f.a.s. the buyers' ship. Each party to the contract alleged that the other was in default under it in failing to obtain the necessary licence. There was an arbitration clause in the contract. Arbitration was claimed, and the arbitrators awarded that the buyers were in default, and assessed the damages payable by the buyers to the sellers at the sum of 300,000 escudos. The buyers appealed to the Board of Appeal of the London Oil and Tallow Trades Association, whose award was stated in the form of a special case. The board held, subject to the opinion of the court, that the refusal by the Portuguese authorities of a licence for the export of the contract goods to Eastern Germany operated to discharge the contract between the sellers and the buyers, and accordingly they reversed the award of the arbitrators. McNair, J., on the hearing of the special case, decided in favour of the sellers and restored in effect the award of the arbitrators, holding the buyers liable. The buyers appealed.

SINGLETON, L.J. (reading the first judgment), said that the judgment of McNair, J., appeared to be based mainly on the decision of the Court of Appeal in *H. O. Brandt and Co.* v. *H. N. Morris & Co., Ltd.* [1917] 2 K.B. 784, where it was held on the construction of the contract and the facts in that case that the obligation of applying for a licence lay on the buyers. He (Singleton, L.J.) was unable to see that in the present case the duty of obtaining an export licence was on the buyers. In his view the duty of the buyers under the present contract was to open a confirmed irrevocable transferable credit in the sellers' name in Lisbon and to produce an effective ship at the right time. The buyers complied with both those requirements and so fulfilled their duty. It was the duty of the sellers to place the goods alongside the ship, which they could not do unless an export licence had been obtained. The buyers knew nothing as to that. One could not determine the duties of the parties without regard to the facts, and among the facts of importance were the place at which the contract was made, the situation of the parties, and the place at which the goods were at the time when the contract was made. In the present case he considered that the duty of obtaining the licence was upon the sellers rather than the buyers. The sellers were in touch with their suppliers, through whom alone a licence to export could be obtained. He was unable to see that the buyers were in default, and in his opinion the judgment of McNair, J., to that effect could not stand.

LORD GODDARD, C.J., read an assenting judgment of his own and also one by ROMER, L.J. Appeal allowed.

APPEARANCES: *L. Caplan*, Q.C., and *Neil Lawson* (*Thomas Cooper & Co.*); *T. G. Roche* (*Crawley & de Reya*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 589**

DIVORCE: LIABILITY OF PARTY CITED FOR COSTS

Mearns *v.* Mearns

Jenkins and Morris, L.JJ. 28th February, 1955

Appeal from Commissioner Sir Harry Trusted.

A wife petitioned for divorce on the grounds of her husband's cruelty. By his answer the husband denied the wife's allegations of cruelty and asked for the dissolution of the marriage on the ground that his wife had committed adultery with the party cited and further asked that the party cited might be condemned in the costs of the suit. The wife and the party cited admitted the adultery. The party cited did not enter an appearance nor was he represented at the hearing. The commissioner, after rejecting the wife's petition and granting a decree *nisi* on the cross-prayer in the husband's answer, ordered the party cited to pay the husband's costs and the husband to pay the wife's costs, such costs to be recoverable by the husband from the party cited. The party cited was informed on 20th May, 1954, that the husband's costs amounted to £383 19s. 4d., and, subsequently, that he would also be liable for the wife's costs, which it was estimated would amount to about the same figure. The party cited appealed against the order as to costs.

JENKINS, L.J., reading the judgment of the court, said that it was a well-established and unassailable proposition that the court would not interfere with the exercise of a judge's discretion as to costs unless the circumstances showed that he had taken into account some irrelevant matter, or had excluded from consideration a relevant matter, or had proceeded on a wrong

principle. In this case, however, the commissioner did not find that the issues of cruelty were connected in any way with the misconduct of which the party cited was admittedly guilty. That was not so in *Kara* v. *Kara and Holman* [1948] P. 287. It was wrong in principle to have saddled the party cited with the costs of the other issues raised between the husband and wife in which the party cited was in no way concerned and the court was, therefore, free to vary the order in accordance with the justice of the case. The proper order to be made was that: (i) the husband should bear and pay so much of his own and his wife's costs as would have been incurred if his answer had been confined to contesting the charges of cruelty without raising the issue of adultery; (ii) the party cited should pay the balance of the husband's costs; and (iii) the husband should pay the balance of the wife's costs but should be entitled to recover such balance from the party cited. Appeal allowed.

APPEARANCES: *Bruce Campbell* (*Bircham & Co.*); *J. G. K. Sheldon* (*Wedlake, Letts & Birds*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R 303

CHANCERY DIVISION

COSTS: LEGAL AID: TAXATION: SUBSTANTIAL REDUCTIONS AND DISALLOWANCES: JURISDICTION OF COURT ON QUANTUM

Theocharides *v.* Joannou

Harman, J. 11th February, 1955

Summons to review taxation.

On the taxation of the defendant's bill of costs of an action brought in the High Court in which both parties were in receipt of legal aid, the taxing master disallowed certain items and reduced others. The defendant objected to the taxation. The relevant items of objection were: (*a*) Fees and travelling expenses charged by the defendant's country solicitor in respect of attendance in London at the examination of a witness on commission. These items were disallowed. (*b*) A fee of three guineas for instructions for brief to counsel to attend the examination of the witness on commission. The taxing master disallowed this item on the ground that it was taken into account in assessing the amount allowed for instructions for brief. (*c*) Nine items in respect of fees charged for attendance of the country solicitor in London at conferences and consultations. The taxing master allowed the R.S.C. Appendix N items for the attendances. He added a sum of twenty guineas to the amount allowed for the instructions for the main brief by way of extra remuneration for the extra items involved through attendance from the country. (*d*) Instructions for the main brief. A sum of 600 guineas was claimed and 200 guineas was allowed (together with the sum of twenty guineas above referred to). The allowance was made by the taxing master in the exercise of his discretion over questions of *quantum* after taking into consideration all the circumstances. (*e*) A fee of fifty guineas for supplemental instructions for brief which were prepared after the trial had lasted several days and for the purposes of its continuance after an adjournment. The taxing master disallowed this item and stated in his answers that he had taken it into account in the item "instructions for brief." The defendant took out a summons for a review of the taxation.

HARMAN, J., said that the difficulty in such cases was that neither litigant had any interest in the matter; only the Legal Aid Fund was interested, and the summonses were really for the benefit of solicitors or counsel, and the taxing master was to some extent forced into the position of guardian of the public purse. To avoid such a position on the present summons, arrangements had been made for the Official Solicitor to brief counsel to appear as *amicus curiæ*. The present case was remarkable in that some £1,100 had been taxed off the defendant's bill of some £2,400. With regard to item (*a*) the question was one of principle and not of *quantum*, and the items should be allowed; it was not right that the country solicitor's expenses of attendance on difficult matters which required his attendance should be denied to him. As to item (*c*) the taxing master had regarded the objection as reasonable, and had added twenty guineas to the "block" fee for instructions on brief to compensate the country solicitor; that was not a correct method, and the twenty guineas should be distributed among the several items; that would have the result of reducing the amount allowed for instructions on brief to 200 guineas. Item (*b*) was a small matter, and the taxing master had taken it into account in the main instructions on brief (item (*d*)), in the same way as he took item (*e*), which had become necessary as, when the case was stood over, a complicated set of supplementary instructions to counsel became necessary. He thus lumped together three quite different items in a case where the affairs of the parties were in the greatest obscurity, their conduct difficult to ascertain and their language difficult to make out. It was not right to group such items together in that way: the circumstances might well justify further instructions to counsel quite different from the original instructions in his brief. Three guineas would be allowed for item (*b*) and twenty-five guineas for item (*e*), as fifty guineas seemed too much. There remained item (*d*) on which the 600 guineas asked for was reduced to 200. It had been submitted that so great a reduction showed that the taxing master could not have taken the matter properly into consideration, and certain other submissions had been made. The defendant's solicitors had not kept any record or entry of attendances; the amount to be allowed was a guess, and the taxing master could guess better than the court. In *White* v. *Altrincham U.D.C.* [1936] 2 K.B. 138, it was said that only in exceptional circumstances would the court overrule a taxing master on a question of *quantum*; here the difference was merely one of *quantum* and not so outrageous as to indicate an improper exercise of discretion. The item would be allowed at 220 guineas. Reference had been made to *Self* v. *Self* [1954] P. 480, but the headnote was not really justified by the judgment, and certain *obiter dicta* needed a cautious approach. Order accordingly.

APPEARANCES: *M. Nesbitt* (*Joynson-Hicks & Co.*, for *Robert C. Wilson*, Margate); *P. Foster* (*Official Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 296

PROBATE, DIVORCE AND ADMIRALTY DIVISION

SHIPPING: COLLISION: LIS ALIBI PENDENS: PROCEEDINGS VEXATIOUS

***Cressington Court* (Owners) *v. Marinero* (Owners)**

The *Marinero*

Willmer, J. 25th February, 1955

Motion.

The plaintiffs' vessel, the *Cressington Court*, was in collision with the defendants' vessel, the *Marinero*, in Argentine waters. The defendants commenced an action in the Argentine Republic and arrested the plaintiffs' vessel. The plaintiffs, wishing to found jurisdiction in Holland, arrested the *Arriero*, a vessel in the same ownership as the *Marinero* and which was in a Dutch port, and they commenced an action in that country. To secure the release of the *Arriero*, the defendants gave a bank guarantee conditional on the Dutch court exercising jurisdiction. Later the plaintiffs arrested the *Marinero* in Liverpool and commenced an action in England. Security was furnished for the release of the *Marinero*. In the Dutch action, the defendants pleaded that the Dutch court had no jurisdiction because the collision occurred in Argentine waters.

WILLMER, J., said that the point taken by the defendants in the Dutch action was one which could not have been taken in this country and, there being no evidence as to the validity of the defendants' plea under Dutch law, it must be presumed that, in the absence of evidence to the contrary, Dutch law was the same as English law. Therefore, the fact of a condition being attached to the giving of the guarantee in the Dutch proceedings did nothing to deprive the guarantee of its value. The upshot of what had happened was that the plaintiffs had got their security in respect of this collision none the less because they got it by the arrest of another ship rather than the *Marinero*. The decision of the majority of the court in *The Christiansborg* (1885), 10 P.D. 141, made it clear that the exact form in which the security was given, and the method by which it was extracted, did not matter, provided that the substance of it was that, in order to secure the future immunity of the ship and her future ability to continue trading, the defendants were forced to give security. That, in effect, was what they had been forced to do in the present case. In those circumstances *The Christiansborg* ought to be followed. To continue to harass the defendants by arresting their ship in this country, notwithstanding the provision of security in the Dutch proceedings, was in all the circumstances vexatious and it would be an abuse of the process of the court to allow the present proceedings to continue. Accordingly, they should be stayed and the defendants relieved from their guarantee. Judgment accordingly.

APPEARANCES: *A. A. Mocatta*, Q.C., and *S. Knox Cunningham* (*Ince, Roscoe, Wilson & Griggs*); *J. V. Naisby*, Q.C., and *P. T. Bucknill* (*Holman, Fenwick & Willan*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 607

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Imperial War Museum Bill [H.C.] [8th March.
Public Works Loans Bill [H.C.] [8th March.
Rural Water Supplies and Sewerage Bill [H.C.] [8th March.

Read Second Time :—

Fisheries Bill [H.C.] [8th March.
Northern Ireland Bill [H.C.] [8th March.

Read Third Time :—

Food and Drugs (Scotland) Bill [H.L.] [8th March.
Oil in Navigable Waters Bill [H.L.] [8th March.

In Committee :—

Chatham Intra Charity of Richard Watts and Other Charities Bill [H.C.] [10th March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Pensions (India, Pakistan and Burma) Bill [H.C.] [10th March.

To enable effect to be given to arrangements as to pensions and connected matters made or to be made between Her Majesty's Government in the United Kingdom and the Government of India or the Government of Pakistan, and to amend the law in relation to certain pensions and other benefits arising out of service in or connected with India, Pakistan or Burma.

Treason Bill [H.C.] [8th March.

To provide that persons who give aid and comfort or adhere to the enemies of the United Nations shall, if the armed forces of the Queen are operating with the United Nations, be deemed guilty of treason.

Read Second Time :—

Salford Corporation Bill [H.C.] [10th March.

B. Questions

Assize Courts (Press Notification)

Asked whether he would send a circular to all under-sheriffs drawing their attention to the desirability of sending a postal notification of the holding of an assize to the editors of all provincial and local newspapers circulating in the area of the assize, in addition to the advertisement now usually appearing in a single newspaper, the Attorney-General said that he considered that the present arrangements for advertising the dates of assizes were adequate to ensure that notice of them was effectively brought to the attention of all concerned. [7th March.

Fitness Standards (Court Judgment)

Mr. Duncan Sandys said he had considered the judgment in *Fullerton* v. *Wallasey Corporation*, and he noted that the views therein expressed on standards of fitness under the Housing Repairs and Rents Act, 1954, governing the issue of certificates of disrepair were in conflict with the interpretation given in a Departmental circular. He would express no opinion as to who was right and he did not see that the judgment called for any action by him. [8th March.

Development Value (Certificates)

Asked the reason for the delay in supplying certificates showing the unexpended balance of established development value under s. 48 of the Town and Country Planning Act, 1954, Mr. Deedes said that up to 25th February the Central Land Board had received 102 applications for certificates under s. 48 (1) of the Act. In fifty cases the certificates had been issued and in forty-one cases new apportionments of development value were needed before the certificates could be issued. Section 48 required the issue of notices of the apportionment to all affected interests and provided a minimum of two months for objection to the Board and appeal to the Lands Tribunal. There did not appear to have been any avoidable delay. [8th March.

School Accident Claims (Insurance Policies)

Sir David Eccles said he was aware of cases in which children had been injured at school in circumstances which did not make the local authority legally liable. He did not think such authorities could, as the law stood, insure children in their care against such accidents, and at present the best that could be hoped for was *ex gratia* payments from time to time. He would, however, examine the matter. [10th March.

Agricultural Machinery (Accidents)

Mr. Nugent said that in the twelve months ended 30th September, 1954, there had been fifty-seven workers killed whilst using agricultural machinery. Legislation to promote the safety of such workers would be introduced as soon as time permitted. [10th March.

Hire-Purchase Restriction

Asked whether he was aware that on the last occasion when hire-purchase was restricted, the regulations were evaded by a system of rental agreements, and what steps he was now taking to prevent a recurrence of this practice, the President of the Board of Trade said that the new order, like the old, did not apply to simple hire. It contained, however, a new definition of hire-purchase agreements in order to avoid certain difficulties which arose last time. [10th March.

STATUTORY INSTRUMENTS

Acquisition of Land (Division of Unexpended Balance) (Scotland) Regulations, 1955. (S.I. 1955 No. 338 (S. 37).) 5d.
Aerated Waters Wages Council (England and Wales) Wages Regulation Order, 1955. (S.I. 1955 No. 326.) 6d.
Aerated Waters Wages Council (Scotland) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 327.)
Bolton and District Joint Sewerage Order, 1955. (S.I. 1955 No. 342.)
Buxton (Water Charges) Order, 1955. (S.I. 1955 No. 350.)
Coastal Flooding (Acreage Payments) Scheme, 1955. (S.I. 1955 No. 343.) 5d.
Colne Valley Water Order, 1955. (S.I. 1955 No. 360.)
County of Kent (Electoral Divisions) Order, 1955. (S.I. 1955 No. 355.) 5d.
County of the Soke of Peterborough (Electoral Divisions) Order, 1955. (S.I. 1955 No. 356.) 8d.
Export of Goods (Control) (Amendment No. 4) Order, 1955. (S.I. 1955 No. 334.)
Fatstock (Guarantee Payments) Order, 1955. 6d.
London Traffic (Prescribed Routes) (City of London and Stepney) Regulations, 1955. (S.I. 1955 No. 335.)
London Traffic (Prescribed Routes) (St. Marylebone) Regulations, 1955. (S.I. 1955 No. 336.)
London Traffic (Prohibition of Waiting) (High Street and London Road, Sevenoaks) Regulations, 1955. (S.I. 1955 No. 337.)
Milk (Special Designations) (Specified Areas) Order, 1955. (S.I. 1955 No. 315.) 5d.
National Health Service (Bellsdyke Mental Hospital Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 300 (S. 31).) 6d.
National Health Service (Edinburgh Royal Victoria and Associated Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 308 (S. 33).) 6d.
National Health Service (Gogarburn Mental Deficiency Institution Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 324 (S. 35).) 5d.
National Health Service (Lochgilphead Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 301 (S. 32).) 5d.
National Health Service (Rosslynlee and Haddington Mental Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 323 (S. 34).) 5d.
National Health Service (West Lothian (Bangour) Hospitals Endowments Scheme) Approval Order, 1955. (S.I. 1955 No. 325 (S. 36).) 5d.
Draft **National Insurance** (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment Order, 1955.
Police (Discipline) (Scotland) Regulations, 1955. (S.I. 1955 No. 347.)
Draft Police Pensions (Scotland) Regulations, 1955. 1s. 8d.

Draft Police Pensions (Scotland) (No. 2) Regulations, 1955. 6d.
Retention of Cables, Mains and Pipes under Highways (Lincolnshire—Parts of Lindsey) (No. 2) Order, 1955. (S.I. 1955 No. 319.)
Stopping up of Highways (Bristol) (No. 1) Order, 1955. (S.I. 1955 No. 328.)
Stopping up of Highways (County of Southampton) (No. 1) Order, 1955. (S.I. 1955 No. 333.)
Stopping up of Highways (Denbighshire) (No. 1) Order, 1955. (S.I. 1955 No. 339.)
Stopping up of Highways (Essex) (No. 1) Order, 1955. (S.I. 1955 No. 341.)
Stopping up of Highways (Kent) (No. 3) Order, 1955. (S.I. 1955 No. 317.)
Stopping up of Highways (London) (No. 10) Order, 1955. (S.I. 1955 No. 318.)
Stopping up of Highways (London) (No. 12) Order, 1955. (S.I. 1955 No. 345.)
Stopping up of Highways (Middlesex) (No. 1) Order, 1955. (S.I. 1955 No. 316.)
Stopping up of Highways (Middlesex) (No. 2) Order, 1955. (S.I. 1955 No. 329.)
Stopping up of Highways (Middlesex) (No. 3) Order, 1955. (S.I. 1955 No. 344.)
Stopping up of Highways (Oxfordshire) (No. 1) Order, 1955. (S.I. 1955 No. 331.)
Stopping up of Highways (Oxfordshire) (No. 2) Order, 1955. (S.I. 1955 No. 332.)
Stopping up of Highways (Plymouth) (No. 1) Order, 1955. (S.I. 1955 No. 330.)
Stopping up of Highways (Surrey) (No. 1) Order, 1955. (S.I. 1955 No. 340.)
Town and Country Planning (Minerals) (Scotland) Regulations, 1955. (S.I. 1955 No. 346 (S. 38).) 8d.
Wild Birds (Bullfinches) Order, 1955. (S.I. 1955 No. 354.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Miss BARBARA MARY BRINDLE, solicitor, of Derby, has been appointed president of the Derby Nursing Division of the St. John Ambulance Brigade.

Mr. EDWIN BROAD, solicitor, of Devonport, has been nominated Lord Mayor of Plymouth and takes office in May.

Personal Note

Mr. Alan Herald Coles, solicitor, of Northampton, was married recently to Miss Barbara L. M. Twigg, of Pinner Hill, Middlesex.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On 4th March, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon CAMPBELL PUNTAN, of 118 Walter Road, Swansea, a penalty of £250, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On 4th March, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JACOB MYER ISAACS, of 12 Grosvenor Street, London, W.1, a penalty of £200, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On 4th March, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that VIVIAN MEYRICK PRICE, of Lorne Chambers, Tenby, and 5 Market Street, Narberth, be suspended from practice as a solicitor for a period of two years from 1st April, 1955, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 4th March, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that CLIFFORD BUCKLEY, of 3 Bowling Green Street, Leicester, be suspended from practice as a solicitor for a period of two years from 4th March, 1955, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 4th March, 1955, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that GEOFFREY MERVYN GABB, of 20 Dumfries Place, Cardiff, be suspended from practice as a solicitor for a period of three years from 4th March, 1955, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

At The Law Society's Preliminary Examination held on 7th, 8th, 9th and 10th February, seventeen candidates out of thirty-nine were successful.

DEVELOPMENT PLANS

CUMBERLAND COUNTY DEVELOPMENT PLAN

Comprehensive Development Area No. 1—Whitehaven

With reference to the notice at p. 172, *ante*, relating to the submission of the above development plan to the Minister of Housing and Local Government, notice has been given that the date therein stated for the submission of objections or representations has been postponed from 11th April, 1955, to a date to be determined after the Cumberland County Development Plan has been approved by the Minister. A further notice will be published giving particulars of this new date. All objections and representations already made will be retained and considered by the Minister and no further communication need be sent to the Minister of Housing and Local Government thereon.

COUNTY OF NORFOLK DEVELOPMENT PLAN

On 28th February, 1955, the Minister of Housing and Local Government approved with modifications the above development plan. Certified copies of the plan as approved by the Minister have been deposited at the County Planning Office, 41–43 Thorpe Road, Norwich, and at the Town Hall, King's Lynn. The copies of the plan so deposited will be open for inspection free of charge by all persons interested, between the hours of 10 a.m. and 5 p.m. on Mondays to Fridays, between the hours of 10 a.m. and 12 noon on Saturdays and at other times by arrangement with the Clerk of Norfolk County Council, County Offices, Thorpe Road, Norwich. The plan became operative as from 11th March, 1955, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirements of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 11th March, 1955, make application to the High Court.

PRACTICE DIRECTION

THE GUARDIANSHIP OF INFANTS ACTS, 1886 AND 1925

Appeals from County Courts or Courts of Summary Jurisdiction

Order 55A, r. 6 (4), of the Rules of the Supreme Court provides that, within ten days after service of the notice of motion which originates an appeal from an order made or refused under the Act of 1886 or the Act of 1925, the appellant shall obtain an appointment for the purpose of obtaining the judge's directions as to the hearing of the appeal.

Before giving such directions and deciding, *inter alia*, whether the parties shall be permitted to adduce further evidence, the judge will require to see and consider the reasons upon which the county court judge, or the justices, made the order under appeal.

The appellant's solicitors should therefore apply for a statement of the reasons for the decision complained of, and lodge it with the judge's clerk when obtaining the above-mentioned appointment.

By direction of Mr. Justice Roxburgh.

W. S. JONES,
Chief Registrar, Chancery Division.

14*th March*, 1955.

Wills and Bequests

Mr. Albert John Walters, solicitor, of Aylesbury, formerly of Llanrwst and Amlwch, North Wales, left £22,349 (£8,245 net).

OBITUARY

MR. H. W. ALDRICH

Mr. Horace Wilfred Aldrich, J.P., solicitor, of Brighton and Portslade, died on 8th March. Admitted in 1909, he was Mayor of Brighton in 1929–30 and was a former president of Sussex Law Society. He was Chairman of Brighton Magistrates, Chairman of the Regency Building Society and of the local board of the Eagle Star Insurance Company.

MR. G. J. C. BEECROFT

Mr. George John Coote Beecroft, solicitor, of Clacton, died on 13th March. He was admitted in 1943.

MR. L. J. T. CHIDELL

Mr. Leonard John Thrupp Chidell, retired solicitor, of Bembridge, I.O.W., and formerly of Wimpole Street, London, W.1, died on 23rd February, aged 88. He was admitted in 1888.

MR. J. P. H. COOKSON

Mr. John Power Hicks Cookson, retired solicitor, of Ottery St. Mary, Devon, died on 4th March. He was admitted in 1913. He was a valued contributor to this Journal for some years.

MR. S. HOSGOOD

Mr. Sebastian Hosgood, the oldest practising solicitor in Birmingham, died on 5th March, aged 90. He was admitted in 1893 and had been magistrates' clerk at Pershore and clerk to the River Avon Commissioners.

MR. W. L. JONES

Mr. William Llewelyn Jones, solicitor, of Bedford, died on 3rd March, aged 76. He was Chairman of the Board of Management of the Bedford and District Chamber of Trade from 1931 to 1949. He was admitted in 1900.

MR. L. O'DEA

Mr. Louis O'Dea, the first Connacht solicitor to become a member of the Incorporated Law Society of Ireland, of which he was president in 1944, died recently, aged 71. He was a member of Dail Eireann from 1923 to 1927. He was admitted in 1905.

SOCIETIES

The seventy-ninth annual general meeting of the BRADFORD INCORPORATED LAW SOCIETY was held at the Law Library, Bradford, on 9th March, when the following officers were elected: president, Mr. R. K. Denby; senior vice-president, Mr. John Duncan; junior vice-president, Mr. Stanley Ackroyd; and joint hon. secretaries, Mr. Geoffrey H. Hall and Mr. R. W. T. Vint.

Among those present at the one hundred and fiftieth anniversary dinner of the LEEDS INCORPORATED LAW SOCIETY, held at Leeds on 11th March, were: Mr. Justice Slade; Mr. Justice Pearce; Mr. Justice Collingwood; The Lord Mayor of Leeds (Councillor H. S. Vick); Judge D. O. McKee; Mr. G. R. Hinchcliffe, Q.C., the Leeds Recorder; Mr. N. Douglas, chairman of the Chartered Auctioneers and Estate Agents Institute; Mr. D. McMichael, president of the Incorporated Accountants District Society of Yorkshire; Mr. D. Veale, president of the Leeds, Bradford and District Society of Chartered Accountants; Mr. H. Mathieson, president of the Insurance Institute of Yorkshire; Mr. J. R. Balmforth, secretary to the Leeds Law Students Society; Mr. H. Bennet, president of the West Yorkshire Society of Architects; Mr. J. Simpson, chairman of the Institute of Bankers (Leeds centre); Mr. D. L. Staniland; Mr. C. W. Banks, president of the Leeds Chamber of Commerce; Mr. W. Pitts, the Lord Mayor's secretary; and Mr. J. E. H. Pearce, Judges' Marshal.

At the monthly meeting of the board of directors of the SOLICITORS BENEVOLENT ASSOCIATION held on 2nd March, twenty-one solicitors were admitted as members of the Association, bringing the total membership up to 7,928. Twenty applications for relief were considered and grants totalling £2,040 were made, £136 of which was in respect of "special" grants for clothing, etc. One application for relief was from the widow of a member who died in 1913, leaving her with a small annuity with which to maintain and educate her young family—now, at the age of 89, she has become bedridden as a result of an accident, and the grant made will enable her to receive nursing care and attention whilst living in the home of her widowed daughter. All solicitors on the Roll for England and Wales are eligible to apply for membership, and application forms and general information leaflets will gladly be supplied on request to the Association's offices, Clifford's Inn, Fleet Street, London, E.C.4. The minimum annual subscription is one guinea and a single payment of ten guineas constitutes life membership of the Association.

Among the new cases which were considered by the board of directors of the LAW ASSOCIATION at their meeting on 7th March, was that of a solicitor who had practised in the City and County of London for fifty-six years. Now approaching his eighty-first birthday, his health has broken down and he can no longer earn. During the last war his office and many documents became a total loss through enemy action and the war damage compensation was insufficient to make good the full loss; many bad debts resulted from the loss of documents. Matters have been made worse by the serious illness of his wife which has lasted a number of years and culminated in a major operation from which she is now very slowly recovering. Their joint income is a National Assistance allowance of £4 2s. a week. The board agreed that this applicant must be helped to the maximum allowed by the National Assistance Board without reduction of the national allowance. Another new beneficiary is the daughter of a life member who for the last five years of his life was crippled and able to earn so little that he was forced to live on capital and therefore left his family ill-provided for. Now that her health has broken down, the daughter's sole income is 15s. a week, to which the Association will add £3. Her need is obviously greater. Her grant also could be greater if those London solicitors who have not yet joined the Association would do so, thus helping her (and others) now and assuring themselves and their dependents of help later, should the need unfortunately arise. The minimum annual subscription is one guinea, a single payment of ten guineas entitles to life membership, and membership is open to all practising solicitors having offices within a ten-mile radius of the General Post Office. Forms of application may be obtained from the Secretary, The Law Association, 25 Queensmere Road, London, S.W.19 (telephone WIMbledon 4107).

The UNITED LAW SOCIETY announce the following debates for April (to be held in Gray's Inn Common Room, at 7.15 p.m.), Monday, 4th: members will be invited to speak on motions drawn out of a hat. Monday, 25th: "That this House prefers Horror Comics to Karl Marx."

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